

TEXAS ETHICS COMMISSION
P.O. Box 12070, Austin, Texas 78711-2070
(512) 463-5800

Randall H. Erben, Chair
Chris Flood, Vice Chair
Chad M. Craycraft
Mary K. “Katie” Kennedy

Patrick W. Mizell
Richard S. Schmidt
Joseph O. Slovacek
Steven D. Wolens

MEETING AGENDA

Date and Time: 10:00 a.m., Tuesday, June 18, 2024
Location: Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2024

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Section 551.074, Government Code, Personnel Matters, Closed Meeting.**
 - A. Discussion to seek legal advice regarding the Sunset Commission’s statutory authority to access otherwise confidential TEC documents and communications under Sections 325.019 and 325.0195 of the Government Code.
 - B. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; Cause No. 03-21-00033, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345th Judicial District Court of Travis County, Texas; and related cases, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas, and Cause No. 22-1064, *Empower Texans, Inc. and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Texas Supreme Court.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

- iii. Cause No. D-1-GN-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court in Travis County, Texas; and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- iv. Case No. 4:23-cv-00808-P, *Institute for Free Speech, a nonprofit corporation and public interest law firm, vs. J.R. Johnson in his official and individual capacities as Executive Director of the Texas Ethics Commission; Mary Kennedy, Chris Flood, and Richard Schmidt in their official capacities as commissioners of the Texas Ethics Commission; and Randall Erben, Chad Craycraft, Patrick Mizell, Joseph Slovacek, and Steven Wolens, in their individual and official capacities as commissioners of the Texas Ethics Commission* in the U.S. District Court for the Northern District of Texas, Fort Worth Division.
- v. Cause No. PD-0310-23, *Ex Parte John Morgan Stafford*, in the Texas Court of Criminal Appeals.
- vi. Cause No. D-1-GN-23-008068, *In re Christopher Paddie*, in the District Court for the 419th Judicial District, Travis County, Texas.
- vii. Cause No. 22-CV-1130, *Matt Wiggins v. Texas Ethics Commission*, in the 122nd Judicial District of Galveston County, Texas.
- viii. Cause No. 2023-DCL-01478, *Valleywide Pharmacy and DMI, Inc., vs. Texas Ethics Commission, by and through its Executive Director, J.R. Johnson, in his official capacity*, in the 445th Judicial District of Cameron County, Texas.
- ix. Civil Action 1:24-CV-500, *LIA Network v. J.R. Johnson, in his official capacity as Executive Director of the Texas Ethics Commission, et al.*, in the United States District Court for the Western District of Texas, Austin Division.

C. Discussion of contemplated litigation and to seek legal advice regarding the collection of imposed penalties.

D. Discussion and possible action related to personnel matters.

E. Reconvene in open session.

3. Recess or continue to “Agenda 2” noticed for the same time and place as this agenda.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: J.R. Johnson, Executive Director.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

NOTICE: Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

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1. Call to order; roll call.
2. Discussion regarding dates for next quarterly Commission meeting.
3. Approve minutes for the following meetings:
 - Executive Session – March 20, 2024; and
 - Public Agenda – March 20, 2024.

RULEMAKING

Rule Adoption

4. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register of comprehensive amendments and reorganization of Chapter 12 of Title 1 of the Texas Administrative Code, regarding Sworn Complaints and related procedures.
5. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register of comprehensive amendments and reorganization of Chapter 6 of Title 1 of the Texas Administrative Code, regarding the organization and administration of the Ethics Commission.
6. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to section 26.1 of Title 1 of the Texas Administrative Code, regarding political advertising.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

Rule Publication

7. Discussion and possible action on the proposal and publication in the Texas Register of amendments to section 18.31 of Title 1 of the Texas Administrative Code, regarding adjustments to reporting thresholds.

ADVISORY OPINIONS

8. Draft Advisory Opinion No. AOR-693: Whether a Texas Limited Liability Company that is a wholly-owned subsidiary of a Master Limited Partnership that is traded on the New York Stock Exchange is prohibited by Chapter 253 of the Election Code from making certain political contributions.
9. Draft Advisory Opinion No. AOR-706: Whether an employee of a political subdivision who leases a residence to an employee may allow the employee to place a sign endorsing a candidate or a measure in the yard of the leased residence.

This opinion construes Section 255.003 of the Election Code.

10. Draft Advisory Opinion No. AOR-708: Whether a PFS filer who owns a law firm that holds settlement funds on behalf of a client must report the settlement funds on the filer's personal financial statement filed under Chapter 572 of the Government Code.

This opinion construes Section 572.023 of the Government Code.

ADMINISTRATIVE WAIVER OF FINES AND TREASURER TERMINATIONS

11. Discussion and possible action on appeals of determinations made under 1 Tex. Admin. Code §§ 18.11, 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:

Staff Recommendation: 8-Day Correction Waiver

- A. LIA Network (00086791)

Staff Recommendation: Waiver

- B. Ayobami T. Abolaji (00084517)
- C. Anne L. Gardner (00042163)
- D. Lacey Hull (00084135)
- E. Clyde D. Loll (00085523)
- F. Cary L. Roberts (00033594)
- G. Gerald Zimmerer (00027075)

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

Staff Recommendation: Reduction

- H. Karyn Brownlee (00083961)
- I. Stephanie A. Finleon Cortez, Former Campaign Treasurer, Vote Yes for LVISD Kids (Terminated) (00087523)
- J. Dale Galeazzi, Campaign Treasurer, Texas Produce Association PAC (00041550)
- K. Jessica Rose Huang (00087888)

Staff Recommendation: No Further Reduction or Waiver

- L. Evelyn L. Brooks (00086347)
- M. Todd B. Gallaher, Campaign Treasurer, NT City Accountability PAC (00087522)
- N. Carlos O. Garcia (00067251)
- O. Abraham George (00086486)
- P. Diane Herrera, Campaign Treasurer, Leander Area Republican Women (00085167)
- Q. Melissa N. Ortega, PhD (00086332)
- R. Lacy Wolf (00086639)

OTHER MATTERS

- 12. Election of Chair and Vice Chair of the Texas Ethics Commission.
- 13. Discussion and possible action regarding Tex. Att’y Gen. Op. KP-0466, as it relates to personal financial statements required under Chapter 572 of the Government Code.
- 14. Adjourn.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: J.R. Johnson, Executive Director.

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The draft meeting minutes will be available on our website the day before the meeting, at <https://www.ethics.state.tx.us/DraftMinutes>.

If you would like a copy of the draft minutes, please provide your email address below, and return this sheet to Ethics Commission staff at the meeting.

Email address:

1 **CHAPTER 6. ORGANIZATION AND ADMINISTRATION**

2 **Subchapter A. GENERAL RULES**

3 **§6.1. Definitions.**

4 The following words and terms, when used in this part, shall have the following meanings, unless
5 the context clearly indicates otherwise.

6 (1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).

7 (2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning
8 Administrative Procedure).

9 (3) Agency--The state agency governed by the commission, as it functions and operates
10 through the administrative staff hired by the commission and its executive director.

11 (4) Commission--The Texas Ethics Commission, as constituted and described in the
12 Texas Constitution, Article 3, §24a.

13 (5) Document--A report, complaint, response, letter, or any other written material.

14 (6) Executive director--The person employed by the commission to serve as the agency's
15 chief administrative officer, or any other employee of the commission acting as the
16 designee of the executive director.

17 (7) Family member or relative--An individual who is related within the second degree of
18 affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B
19 (concerning Relationships by Consanguinity or by Affinity).

20 (8) Filer--A person required to file a report with the commission or a local filing authority
21 in accordance with this title.

22 (9) Individual--A human being who has been born and is alive.

23 (10) Local filing authority--A public servant other than the Texas Ethics Commission
24 with whom a filer must file a report in accordance with this title, as identified in §20.5 of
25 this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title
26 (relating to Reports Filed with Other Local Filing Authority).

27 (11) Open Meetings Law--The Government Code, Chapter 551 (concerning Open
28 Meetings).

29 (12) Open Records Law--The Government Code, Chapter 552 (concerning Open
30 Records).

31 (13) Person--An individual, representative, corporation, association, or other entity,
32 including any nonprofit corporation, or any agency or instrumentality of federal, state, or
33 local government.

- 1 (14) Postmark--A postal cancellation by the United States Postal Service that contains the
2 post office name, state, and zip code and the month, day, and year the canceling post
3 office accepted custody of the material.
- 4 (15) Presiding officer--The person elected to serve as the commission's chairman or
5 chairwoman under §6.21 of this title (relating to Officers of the Commission).
- 6 (16) Report--Any document or other information required to be filed under this title.
- 7 (17) Staff--Employees of the commission, hired by the commission or the executive
8 director.
- 9 (18) Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and
10 Campaigns).
- 11 (19) First responder--An individual who is:
- 12 (A) a peace officer whose duties include responding rapidly to an emergency;
- 13 (B) fire protection personnel, as that term is defined by Section 419.021,
14 Government Code;
- 15 (C) a volunteer firefighter who performs firefighting duties on behalf of a political
16 subdivision;
- 17 (D) an ambulance driver; or
- 18 (E) an individual certified as emergency medical services personnel by the
19 Department of State Health Services.
- 20 (20) Judicial office--The office of:
- 21 (A) chief justice or justice, supreme court;
- 22 (B) presiding judge or judge, court of criminal appeals;
- 23 (C) chief justice or justice, court of appeals;
- 24 (D) district judge;
- 25 (E) judge, statutory county court; or
- 26 (F) judge, statutory probate court.
- 27 (21) Non-judicial office--An elective public office and the secretary of state, but not
28 including an office described by paragraph (20) of this section.

1 **§6.3. Purpose and Construction of Rules.**

2 (a) This title is adopted for the following purposes:

3 (1) to establish and explain the practice and procedures followed by the commission and
4 its employees performing its duties under the law; and

5 (2) to provide specific guidance necessary to encourage and ensure full compliance with
6 all laws administered and enforced by the commission.

7 (b) A person's obligation to comply with a requirement or prohibition established by statute
8 exists even if this title is silent concerning a statutory requirement.

9 (c) This title shall always be construed in a manner consistent with all applicable constitutional
10 and statutory requirements.

11 **§6.5. Authority To Adopt Rules.**

12 This title is adopted under the authority granted by the Act, the Administrative Procedure Act,
13 and by any other law administered and enforced by the commission that establishes the
14 commission's authority to adopt rules.

15 **§6.7. Actions That Require Six Votes.**

16 (a) The following actions require the affirmative vote of no less than six members of the
17 commission:

18 (1) to adopt a rule to administer any law administered and enforced by the commission;

19 (2) to render any decision on a complaint or a report of a violation as provided by the
20 Government Code, Chapter 571 (concerning Texas Ethics Commission), other than a final
21 decision after a formal hearing that a violation has not occurred, which requires only five
22 votes;

23 (3) to prohibit participation by a member of the commission in commission proceedings
24 relating to the investigation, complaint, or motion;

25 (4) without a sworn complaint, to initiate a preliminary review of an alleged violation of a
26 law administered or enforced by the commission;

27 (5) to subpoena and examine witnesses and documents that directly relate to a sworn
28 complaint and issue a written request to a peace officer to serve a subpoena of the
29 commission in the manner prescribed for service of a district court subpoena;

30 (6) to order and perform a complete audit at an informal or formal hearing of a sworn
31 complaint or commission-initiated complaint; and

32 (7) to initiate civil enforcement actions and refer matters to the appropriate prosecuting
33 attorney for criminal prosecution.

1 (b) Any action not listed in subsection (a) of this section that requires a vote of the commission
2 requires the affirmative vote of no less than five members of the commission.

3 **§6.9. Computation of Time.**

4 (a) This section states how to compute a period of time prescribed or allowed by this title, by any
5 order of the agency, or by any applicable statute. The day of the act, event, or default after which
6 the designated period of time begins to run is not included. The last day of the period is included.
7 However, if the last day of the time period would be a Saturday, a Sunday, or a legal holiday, the
8 period is extended until the next day that is not a Saturday, a Sunday, or a legal holiday. A legal
9 holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency
10 is closed for a holiday established by state law.

11 (b) A time period described by statute or this title to be a certain number of business days is
12 calculated under subsection (a) of this section without including any Saturday, Sunday, or legal
13 holiday within that time period.

14 (c) A document required to be filed or served by a deadline established by statute or this title is
15 filed or served when it is actually received. A document may be deemed to be filed or served
16 when it is deposited with the United States Postal Service, properly addressed to the recipient,
17 with all postage prepaid. The date of the postmark on the envelope for the document is presumed
18 to be the date the document was deposited with the United States Postal Service.

19 (d) A document filed or served by delivery to the United States Postal Service is presumed to
20 have been filed before 5:00 p.m. on the date indicated by the postmark.

21 **Subchapter B. OFFICERS AND EMPLOYEES OF THE COMMISSION**

22 **§6.21. Officers of the Commission.**

23 (a) The commission shall select a presiding officer and a vice-presiding officer.

24 (b) Commission officers are elected annually by majority vote of the commission. The election
25 shall take place at the first commission meeting held after June 1 of each year. Each officer shall
26 serve until his or her successor is selected.

27 (c) The presiding officer and the vice-presiding officer shall be elected from different political
28 party caucus lists.

29 (d) The presiding officer may be re-elected; however, if a new presiding officer is elected it
30 should be from a different political party caucus list than the former presiding officer.

31 (e) The presiding officer shall preside at all meetings of the commission. While presiding, the
32 presiding officer shall direct the order of the meeting, appoint committees and persons to chair
33 committees, recognize persons to be heard at hearings, set reasonable and necessary time limits
34 for speakers, and take other actions to clarify issues and preserve order. When the presiding
35 officer is absent, the vice-presiding officer shall perform all duties of the presiding officer.

1 (f) The presiding officer may perform the following actions of the commission:

2 (1) Sign previously approved subpoenas and orders;

3 (2) Schedule hearings and meetings;

4 (3) Timely respond to litigation matters on behalf of the commission when action is
5 required before the next scheduled meeting and is within the scope of the authorization
6 granted by the commission; and

7 (4) Respond to matters on behalf of the commission when action is required and is within
8 the scope of the authorization granted by the commission.

9 (g) The presiding officer may appoint a commissioner as chair pro tem to preside over a hearing
10 held by the commission.

11 **§6.23. Commission Staff.**

12 (a) The executive director is the chief administrative officer of the agency. The executive director
13 shall attend commission meetings at the pleasure of the commission and serve as liaison between
14 the commission and the public.

15 (b) The commission delegates to the executive director all powers conferred on the commission
16 by the Act or other law, except for any power that requires a vote of the commission. Any action
17 taken by the executive director shall conform with all applicable law, including this title and
18 other policies that may be adopted from time to time by the commission.

19 (c) The executive director shall attend commission meetings unless specifically excused by the
20 commission and shall perform any duties or assignments established by the commission.

21 (d) The general counsel shall attend commission meetings unless specifically excused by the
22 commission, shall provide legal advice to the commission and executive director, and shall
23 perform any duties delegated by the executive director.

24 **§6.25. Appointment and Operation of Advisory Committees.**

25 (a) The commission by resolution may establish one or more committees to obtain the viewpoints
26 and advice of interested persons with respect to any contemplated rulemaking. The membership
27 or method of appointment of members to a committee established under this section shall be
28 specified in the resolution that creates the committee. A committee created under this section is
29 advisory only.

30 (b) In addition to committees established under subsection (a) of this section, with the consent of
31 other members of the commission the presiding officer may from time to time establish and
32 appoint commission members and others to a special committee to exercise advisory duties
33 specified by the presiding officer.

1 **Subchapter C. COMMISSION MEETINGS**

2 **§6.31. Quorum.**

3 Five commissioners must be present as a quorum to hold a commission meeting.

4 **§6.33. Frequency of Meetings.**

5 The commission shall meet at least once a quarter at the call of the presiding officer.

6 **§6.35. Called Meetings.**

7 The executive director shall give notice to each commissioner of the date and time of each
8 meeting. Notice under this section shall be provided a reasonable amount of time in advance of
9 the meeting, and may be by telephone, fax, or mail.

10 **§6.37. Open Meetings.**

11 (a) Except as provided by subsection (b) of this section, each meeting of the commission shall be
12 conducted in accordance with the Open Meetings Law.

13 (b) A commission meeting limited to consideration and action on matters relating to sworn
14 complaints is not subject to the Open Meetings Law.

15 **§6.39. Meeting Agenda.**

16 (a) The agenda shall consist of agenda items proposed by the executive director prior to the
17 meetings for which the agenda is specified. At a reasonable time before filing a copy of the
18 agenda as required by the Open Meetings Law, the executive director shall provide a copy of the
19 proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the
20 executive director shall provide a copy of the proposed agenda to the vice-presiding officer. If the
21 vice-presiding officer is not reasonably available, the executive director shall provide a copy of
22 the proposed agenda to any two commissioners.

23 (b) The presiding officer, a commission member with the consent of the presiding officer, or any
24 two commissioners may direct the executive director to include an item on the agenda if it
25 complies with the posting requirements specified by law. The presiding officer may direct the
26 executive director to remove an item included on a proposed agenda unless that item is requested
27 by two commission members other than the presiding officer.

28 (c) A member of the public may ask the executive director to place an item on a proposed
29 agenda. The executive director shall advise the commission of the request and may include the
30 item on a proposed agenda.

31 **§6.41. Public Hearing and Participation.**

32 (a) A public hearing on an agenda item shall be conducted when required by law or requested by
33 a commissioner.

1 (b) The executive director shall prepare and maintain a plan for providing special assistance
2 (including without limitation translation of the English language) to persons who request such
3 assistance for the purpose of attending, observing, or participating in a commission meeting.

4 **§6.43. Speakers Addressing the Commission.**

5 (a) The executive director shall prescribe a speaker registration form. Each person who wishes to
6 speak at a commission meeting shall provide the following information:

7 (1) the speaker's name;

8 (2) the person or entity the speaker represents, if any;

9 (3) the agenda item the speaker wishes to address; and

10 (4) his or her mailing address and telephone number.

11 (b) Any person who addresses the commission shall state his or her name and the name of the
12 person or entity the speaker represents, if any, for purposes of the tape recording under §6.47 of
13 this title (relating to Tape Recording of Meeting; Minutes).

14 **§6.45. Order and Conduct of Commission Meeting.**

15 (a) The presiding officer shall preside at all meetings of the commission. The presiding officer
16 shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard,
17 set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards
18 of conduct, and take any other action necessary in his or her discretion to clarify issues and
19 preserve order. When the presiding officer is absent, the vice-presiding officer shall perform all
20 duties under this subsection.

21 (b) Commission meetings shall be conducted in accordance with rules and procedures set forth in
22 the most recently published edition of Robert's Rules of Order.

23 (c) With unanimous consent of all commissioners present, any provision or requirement of this
24 section may be waived.

25 (d) No action of the commission that otherwise complies with law shall be void or invalid
26 because the action was taken in violation of a rule or procedure established by this section.

27 **§6.47. Tape Recording of Meeting; Minutes.**

28 (a) All meetings of the commission shall be tape recorded. The tape recording shall be the official
29 record of actions taken at the meeting.

30 (b) The presiding officer shall announce the names of each commissioner who makes or seconds
31 a motion to be voted upon by the commission. After the vote has been taken, the presiding officer
32 shall announce the vote in a manner that identifies how each commissioner voted, if a
33 commissioner abstained, or if a commissioner was not present for the vote.

1 (c) The executive director shall prepare minutes after each meeting that reflect all commission
2 votes and other actions taken during the meeting. The minutes shall be approved by vote of the
3 commission at a subsequent commission meeting.

4 **Subchapter D. RULEMAKING PROCEDURES**

5 **§6.61. Comments on Proposed Rules.**

6 (a) Written comments on a proposed rule received at the agency office shall be reviewed by the
7 executive director and made available to each member of the commission before final action to
8 adopt the rule.

9 (b) Oral or written comments on a proposed rule may also be offered at the public hearing
10 required by §6.63 of this title (relating to Public Hearings on Proposed Rules).

11 **§6.63. Public Hearings on Proposed Rules.**

12 The commission will hold a public hearing on each proposed rule before it takes final action to
13 adopt the rule. Unless otherwise scheduled, the public hearing will be held immediately before
14 the commission votes on the proposed rule.

15 **Subchapter E. AGENCY FEES AND CHARGES**

16 **§6.81. Charges; Payment of Money; Refunds.**

17 (a) Any fee or charge payable to the agency shall be paid in advance, unless satisfactory
18 arrangements for subsequent payment are approved by the executive director.

19 (b) Money paid by actual mistake or in excess, such as a payment not required by law, may be
20 refunded. A mere change of purpose after the payment of money, as when a party desires to
21 withdraw a filing, will not entitle a party to a refund.

22 **§6.83. Copying Charges.**

23 The charge for providing copies of documents shall be in accordance with rules established by
24 the General Services Commission or other applicable law.

25 **§6.87. Waiver of Fees for Copies or Publications.**

26 The executive director may waive or reduce a charge established by this subchapter when, in his
27 or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the
28 information primarily benefits the general public.

CHAPTER 12. SWORN COMPLAINTS

Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§12.5. Deadline for Filing a Complaint.

(a) The commission has no jurisdiction over an alleged violation:

(1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at the time the commission would vote to initiate a preliminary review of a matter, the allegation would be barred from criminal prosecution by operation of the applicable statute of limitations; or

(2) if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(b) For purposes of this section, a complaint is filed on the date it is hand-delivered to the commission or on the date that it is deposited in the mail or with a common or contract carrier, properly addressed, with postage prepaid.

(c) For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.6. File Date for Purposes of Commission Response Deadline.

For purposes of section 571.123 of the Government Code, the file date for a complaint is the date the complaint is received at the agency office.

§12.7. Confidentiality.

(a) The commission and its employees shall not communicate any information about a sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(b) Confidentiality under section 571.140 of the Government Code may be waived only if the complainant and each respondent named in the complaint provide a verified, written waiver of confidentiality to the executive director.

§12.9. Compliance with Open Meetings Law and Open Records Law.

(a) The Open Meetings Law, chapter 551 of the Government Code, does not apply to a meeting or decision of the commission in connection with a complaint until written notice of a formal hearing on the complaint is sent to the respondent and complainant.

(b) The Open Records Law, chapter 552 of the Government Code, does not apply to information relating to a complaint until written notice of a formal hearing on the complaint is sent to the respondent and complainant.

1 **§12.11. Delegation to Executive Director.**

2 Any duty or power of the commission relating to a complaint that does not require a commission
3 vote is delegated to the executive director.

4 **§12.13. Representation by Counsel.**

5 (a) A respondent has the right to be represented by counsel retained by the respondent in any
6 proceeding of a complaint.

7 (b) Counsel representing a respondent shall enter an appearance with the commission that
8 contains the counsel's mailing address, email address, and telephone and fax numbers. If the
9 respondent's counsel is not licensed to practice law in Texas, the representative must show
10 authority to appear as the respondent's counsel.

11 (c) The commission may, through the approval of its presiding officer, admit an attorney who is a
12 resident of and licensed to practice law in another state, and who is not an active member of the
13 State Bar of Texas, to represent a respondent before the commission if the nonresident attorney
14 complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules
15 Governing Admission to the Bar of Texas and files a motion, accompanied by proof of
16 compliance with those provisions, with the commission requesting to be admitted to represent a
17 respondent.

18 (d) This rule does not allow a person to engage in the unauthorized practice of law.

19 **§12.15. Appearance of Complainant at Hearing.**

20 The commission may grant a complainant the opportunity to be heard at a hearing.

21 **§12.19. Agreements to be in Writing.**

22 No stipulation or agreement with respect to any matter in a complaint shall be effective unless it
23 has been:

24 (1) reduced to writing and signed by each person making the stipulation or agreement, or
25 by that person's authorized representative; or

26 (2) entered into the record during the course of a hearing.

27 **§12.21. Notice.**

28 (a) A notice required to be sent to a complainant under chapter 571 of the Government Code shall
29 be sent to the address most recently provided by the complainant.

30 (b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall
31 be sent to the address provided by the complainant or to the address most recently provided by
32 the respondent.

33 (c) A person entitled to receive notice may waive that right by filing a written waiver with the
34 executive director.

1 (d) A respondent or complainant in a complaint may waive the right under section 571.032 of the
2 Government Code to receive written notices related to the complaint by registered or certified
3 mail, restricted delivery, return receipt requested, and may agree to receive written notices related
4 to the complaint by first class mail, electronic mail, or other means.

5 **§12.23. Hearing in Respondent’s Absence.**

6 If a respondent fails to appear at a hearing, the commission may proceed in the respondent's
7 absence and may find credible evidence of the violations alleged in the complaint and may issue
8 a final order imposing a civil penalty.

9 **§12.25. Waiver of Hearing.**

10 A respondent may waive the right to a hearing.

11 **§12.27. Deadline Extension.**

12 The executive director may extend a deadline pursuant to §571.136 of the Government Code.

13 **§12.28. Production of Documents During Preliminary Review.**

14 (a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the
15 Government Code, commission staff must send to the person from whom records are sought a
16 written request for the production or inspection of documents or other tangible things that:

17 (1) specifies the items to be produced or inspected, either by individual item or by
18 category, and describes with reasonable particularity each item and category; and

19 (2) provides a reasonable amount of time, but not less than 30 days, to comply with the
20 request.

21 (b) The person from whom records are sought must produce or allow the inspection of documents
22 or other tangible things within the person’s possession, custody or control within the time
23 provided in the request, or submit in writing, as appropriate:

24 (1) objections to those records that are unreasonable, improper, or unnecessary to
25 investigate the complaint; or

26 (2) that, after a diligent search, no items have been identified that are responsive to the
27 request.

28 (c) Commission staff shall provide to the commission any response it receives to its request for
29 production or inspection when applying for a subpoena under §571.137(a-1) of the Government
30 Code.

31 **§12.29. Subpoenas Issued by Commission.**

32 (a) A subpoena issued under §571.137 of the Government Code shall specify the date, time,
33 place, and manner for execution of the subpoena.

1 (b) A subpoena issued under section 571.137 of the Government Code that requires a person to
2 provide testimony shall be served on that person at least 10 business days before the date the
3 subpoena is to be executed.

4 **§12.30. Subpoenas Issued by Counsel for the Respondent.**

5 (a) This section applies only to subpoenas issued by a respondent’s counsel under section
6 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing)
7 or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the
8 Government Code.

9 (b) A subpoena must be issued in the name of “The State of Texas” and must:

10 (1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at
11 which the witness is summoned to appear;

12 (2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics
13 Commission;

14 (3) state the date on which the subpoena is issued;

15 (4) identify the person to whom the subpoena is directed;

16 (5) state the time and place of the preliminary review hearing or formal hearing at which the
17 subpoena directs the person to appear;

18 (6) identify the respondent at whose instance the subpoena is issued and the respondent’s
19 attorney of record;

20 (7) specify with reasonable particularity any documents with which the person to whom the
21 subpoena is directed shall appear;

22 (8) state the text of § 12.31(i) of this chapter; and

23 (9) be signed by the attorney issuing the subpoena.

24 (c) A subpoena must command the person to whom it is directed to appear and give testimony
25 at:

26 (1) a preliminary review hearing; or

27 (2) a formal hearing.

28 (d) A subpoena may only direct a person to appear, with or without documents, and give
29 testimony at a preliminary review hearing or formal hearing before the commission.

30 (e) A subpoena may be issued only by the counsel of record for a respondent in a sworn
31 complaint proceeding before the commission against that respondent.

32 (f) Service.

1 (1) Manner of service. A subpoena may be served at any place within the State of Texas by
2 any sheriff or constable of the State of Texas, or any person who is not a party and is 18
3 years of age or older. A subpoena must be served by delivering a copy to the witness and
4 tendering to that person any fees required by law. If the witness is a party and is represented
5 by an attorney of record in the sworn complaint proceeding, the subpoena may be served on
6 the witness's attorney of record.

7 (2) Deadline for service. A subpoena must be served upon the person required to appear at
8 least 21 days before the preliminary review hearing or formal hearing at which the person is
9 required to appear. The subpoena and proof of service must be filed with the commission
10 within three days of its service on the person required to appear.

11 (3) Proof of service. Proof of service must be made by filing either:

12 (A) the witness's signed written memorandum attached to the subpoena showing that the
13 witness accepted the subpoena; or

14 (B) a statement by the person who made the service stating the date, time, and manner
15 of service, and the name of the person served.

16 (g) Response.

17 (1) Except as provided in this subsection, a person served with a subpoena must comply with
18 the command stated therein unless discharged by the commission or by the party summoning
19 such witness. A person commanded to appear and give testimony must remain at the place
20 of hearing from day to day until discharged by the commission or the party summoning the
21 witness.

22 (2) If a subpoena commanding testimony is directed to a corporation, partnership,
23 association, governmental agency, or other organization, and the matters on which
24 examination is requested are described with reasonable particularity, the organization must
25 designate one or more persons to testify on its behalf as to matters known or reasonably
26 available to the organization.

27 (3) A person commanded to appear with documents must produce the documents as they are
28 kept in the usual course of business or must organize and label them to correspond with the
29 categories in the demand.

30 (4) A person commanded to appear at a hearing must file any motion to quash the subpoena
31 or objection to a requirement to appear with certain documents with the commission no later
32 than the 14th day before the hearing at which the person is directed to appear. Commission
33 staff may move to quash a subpoena or object to appearance with certain documents in the
34 same manner as the person commanded to appear by the subpoena. The filer of a motion to
35 quash or objection to a requirement to appear with certain documents must serve the motion
36 or objection on the proponent of the subpoena in person, by mail, by commercial delivery
37 service, by fax, by email, or by other such manner as the presiding officer of the commission
38 may direct, no later than the deadline for filing the motion to quash or objection to
39 appearance with documents with the commission. After affording commission staff and the
40 person commanded to appear an opportunity to move to quash the subpoena or object to

1 appearance with certain documents, and affording the proponent of the subpoena an
2 opportunity to respond to the motion to quash or objection to appearance with documents,
3 the commission’s presiding officer shall rule on a motion to quash or objection to appearance
4 with documents.

5 (5) A person commanded to attend and give testimony, or to produce documents or things,
6 at a preliminary review hearing or formal hearing may object to giving testimony or
7 producing documents at the time and place specified for the hearing, rather than under
8 subsection (g)(4) of this section.

9 (6) A party’s appearance with a document in response to a subpoena directing the party to
10 appear with the document authenticates the document for use against that party in any
11 proceeding before the commission unless the party appearing with the document objects to
12 the authenticity of the document, or any part of it, at the time of the party’s appearance,
13 stating the specific basis for objection. An objection must have a good faith factual and legal
14 basis. An objection made to the authenticity of only part of a document does not affect the
15 authenticity of the remainder. If objection is made, the party attempting to use the document
16 should be given a reasonable opportunity to establish its authenticity. The requirement that
17 the commission provide a reasonable opportunity to establish the document’s authenticity
18 may be satisfied by the opportunity to present a witness to authenticate the document at a
19 subsequent hearing before the commission.

20 (h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing
21 undue burden or expense on the person served. In ruling on a motion to quash or objection to
22 appearance with documents, the presiding officer must provide a person served with a subpoena
23 an adequate time for compliance, protection from disclosure of privileged material or
24 information, and protection from undue burden or expense. The presiding officer may impose
25 reasonable conditions on compliance with a subpoena, including compensating the witness for
26 undue hardship.

27 **§12.31. Conduct and Decorum.**

28 (a) Parties, representatives, and other participants at a hearing shall conduct themselves with
29 dignity, show courtesy and respect for one another and for the commission, and follow any
30 additional guidelines of decorum prescribed by the presiding officer, including adherence to the
31 amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the
32 Texas Lawyer’s Creed promulgated by the Supreme Court of Texas and the Court of Criminal
33 Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme
34 Court of Texas.

35 (b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and
36 decorum.

37 (c) All objections, arguments, and other comments by parties shall be directed to the commission
38 and not to an opposing party.

39 (d) While a party is addressing the commission or questioning a witness, any other party shall not
40 interrupt for any purpose except to make a valid objection.

1 (e) Parties shall not approach the dais without leave of the presiding officer and must not lean on
2 the dais.

3 (f) Parties shall remain seated at the counsel table at all times except:

4 (1) when addressing the commission; and

5 (2) whenever it may be proper to handle documents, exhibits, or other evidence.

6 (g) Parties must question witnesses and deliver arguments to the commission while seated at the
7 counsel table or standing at the lectern. If a party seeks to question or argue from another
8 location, leave of the presiding officer must be requested and granted.

9 (h) Parties must request leave of the presiding officer to conduct a demonstration.

10 (i) The presiding officer may take appropriate action to maintain and enforce proper conduct and
11 decorum, including:

12 (1) issuing a warning;

13 (2) sanctioning a party pursuant to §12.33 of this chapter;

14 (3) excluding persons from the proceeding;

15 (4) recessing the proceeding; and

16 (5) clearing the hearing room of persons causing a disruption.

17 **§12.33. Sanctioning Authority.**

18 (a) The presiding officer has the authority to impose appropriate sanctions against a party or its
19 representative for:

20 (1) filing a motion or pleading that is deemed by the presiding officer to be groundless
21 and brought:

22 (A) in bad faith;

23 (B) for the purpose of harassment; or

24 (C) for any other improper purpose, such as to cause unnecessary delay or
25 needless increase in the cost of the proceeding;

26 (2) abuse of the discovery process in seeking, making, or resisting discovery;

27 (3) failure to comply with a commission order; or

28 (4) violating §12.31 of this chapter.

1 (b) The presiding officer may issue an order imposing sanctions when justified by party or
2 representative behavior described in subsection (a) of this section and after notice and
3 opportunity for hearing. Sanctions may include:

4 (1) disallowing or limiting further discovery by the offending party;

5 (2) charging all or part of the expenses of discovery against the offending party or its
6 representatives;

7 (3) deeming designated facts be admitted for purposes of the proceeding;

8 (4) refusing to allow the offending party to support or oppose a claim or defense or
9 prohibiting the party from introducing designated matters into the record;

10 (5) disallowing in whole or in part requests for relief by the offending party and excluding
11 evidence in support of those requests; and

12 (6) striking motions or testimony in whole or in part.

13 **§12.34. Agreed Orders.**

14 (a) The commission may enter into an agreed order with a respondent to resolve and settle a
15 complaint filed against the respondent, including an assurance of voluntary compliance, a notice
16 of reporting error, or an agreed order and resolution.

17 (b) An assurance of voluntary compliance:

18 (1) resolves a sworn complaint:

19 (A) with no determination that a violation within the jurisdiction of the commission
20 has occurred, if entered into before a preliminary review hearing is completed; or

21 (B) with a determination that all violations within the jurisdiction of the
22 commission, when viewed as a whole in consideration of any mitigating action
23 taken by the respondent, are technical or de minimis; and

24 (2) may include a civil penalty.

25 (c) A notice of reporting error resolves a complaint with a determination that all violations within
26 the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of
27 disclosure and may include a civil penalty in the form of an assessment fee.

28 (d) An agreed order and resolution resolves a sworn complaint with a determination that one or
29 more violations within the jurisdiction of the commission occurred and may include a civil penalty.

30 **§12.35. Frivolous Complaint.**

31 In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil
32 Procedure, Rule 13, and interpretations of that rule, and may also consider:

1 (1) the timing of the complaint with respect to when the facts supporting the alleged
2 violation became known or should have become known to the complainant, and with
3 respect to the date of any pending election in which the respondent is a candidate or is
4 involved with a candidacy, if any;

5 (2) the nature and type of any publicity surrounding the filing of the complaint, and the
6 degree of participation by the complainant in publicizing the fact that a complaint was
7 filed with the commission;

8 (3) the existence and nature of any relationship between the respondent and the
9 complainant before the complaint was filed;

10 (4) if respondent is a candidate for election to office, the existence and nature of any
11 relationship between the complainant and any candidate or group opposing the
12 respondent;

13 (5) any evidence that the complainant knew or reasonably should have known that the
14 allegations in the complaint were groundless; and

15 (6) any evidence of the complainant's motives in filing the complaint.

16 **§12.36. Assessment of Civil Penalty.**

17 (a) The commission shall consider the factors listed in §571.177 of the Government Code when
18 assessing a civil penalty against a respondent, including whether the respondent timely responds
19 to written questions or subpoenas.

20 (b) The commission may consider the fine amounts established by chapter 18 of this title in
21 determining the amount of a fine to be assessed in a sworn complaint proceeding.

22 (c) The commission may consider a late or corrected report or corrective action to be a mitigating
23 factor in determining the amount of a fine, if any.

24 **Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

25 **§12.51 Non-Complying Complaint.**

26 (a) A complaint does not comply with the requirements of §571.122 of the Government Code if:

27 (1) the complaint includes an allegation of conduct that the commission has previously
28 determined is not a violation of a statute or rule within the commission's jurisdiction; and

29 (2) before the complaint was filed the complainant was provided notice that such conduct
30 is an invalid basis for an allegation.

31 (b) A complainant has been provided notice if, before a complaint is filed, the commission states
32 the basis for rejecting an allegation in a written communication mailed to the complainant at the
33 last address provided to the commission by the complainant, or in a written communication

1 transmitted by electronic mail to the complainant at the last electronic mail address provided to
2 the commission by the complainant.

3 (c) A complaint determined to be non-complying under subsection (a) of this section is presumed
4 to be a frivolous or bad faith complaint.

5 **§12.52. Response to Notice of Complaint.**

6 (a) The response required by section 571.1242 of the Government Code must:

7 (1) be in writing;

8 (2) admit or deny the allegations set forth in the complaint; and

9 (3) be signed by the respondent.

10 (b) If a respondent does not submit a response within the time period prescribed by section
11 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty
12 for failure to file a response.

13 (c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of
14 this section, the commission may issue an order imposing a penalty for failure to file a complete
15 response.

16 **§12.53. Commission Initiated Complaint.**

17 (a) Commission staff may gather or present documents or evidence, make recommendations, and
18 otherwise communicate outside the presence of the respondent with commissioners in
19 contemplation of, or in preparation for, a commission initiated preliminary review.
20 Commissioners may request documents, evidence, or recommendations, and otherwise
21 communicate with commission staff outside the presence of the respondent, in contemplation of,
22 or in preparation for, a commission initiated preliminary review.

23 (b) A preliminary review initiated by the commission under section 571.124(b) of the
24 Government Code is deemed to be a complaint for purposes of all further proceedings under
25 chapter 571 of the Government Code and of this chapter.

26 (c) Documents or evidence gathered by the commission and commission staff in contemplation
27 of, or in preparation for, a commission initiated preliminary review are related to the processing
28 of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the
29 Government Code.

30 (d) Discussions between the commission and commission staff regarding gathering documents or
31 evidence in contemplation of, or in preparation for, a commission initiated preliminary review are
32 related to the processing of a preliminary review or motion for the purposes of sections 571.139
33 and 571.140 of the Government Code.

1 **§12.59. Description of Violation.**

2 (a) If a complaint does not include the specific rule or provision of law alleged to have been
3 violated, the complaint must clearly and concisely describe facts that, if true, would constitute a
4 violation of a law administered and enforced by the commission.

5 (b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient
6 if the correct citation can reasonably be ascertained by the commission. When a complaint
7 erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or
8 provision of law in the notice provided to the respondent.

9 **§12.61. Statement of Facts.**

10 (a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice
11 of the law violated and of the manner and means by which the violation allegedly occurred and to
12 afford the respondent a basis on which to prepare a response.

13 (b) The facts alleged must disclose the specific date or dates on which the alleged violation
14 occurred, if that date is known to the complainant. If the complainant is unable to provide a
15 specific date for the violation, the complaint must disclose a specific period of time during which
16 the alleged violation may have occurred.

17 (c) The facts alleged may adopt by reference the content of documents submitted with the
18 complaint. However, the allegations must reasonably identify those portions of the document that
19 are relevant to the alleged violation.

20 **§12.67. Copies and Documents Provided by the Commission.**

21 (a) The executive director shall provide to a respondent copies of all documents submitted with a
22 complaint unless the executive director determines that certain supporting documents are
23 redundant.

24 (b) If the executive director determines that supporting documents are redundant, the notice of
25 complaint shall describe the documents and inform the respondent that the documents are
26 available for examination by the respondent at the agency office and that copies will be provided
27 to the respondent on request at the respondent's expense.

28 (c) Whenever the executive director believes a complainant or respondent may agree a document
29 is not needed, the executive director may ask if the complainant or respondent will waive the
30 right to receive the document.

31 **Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW**

32 **§12.81. Technical, Clerical, or *De Minimis* Violations.**

33 (a) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government
34 Code may include a first-time allegation against a respondent for:

- 1 (1) Typographical or incomplete information on a campaign finance report that is not
2 misleading and does not substantially affect disclosure;
- 3 (2) Failure to include a disclosure statement on political advertising;
- 4 (3) Failure of a non-incumbent to use the word “for” in a campaign communication that is
5 not otherwise misleading;
- 6 (4) Failure to include the highway right-of-way notice on political advertising;
- 7 (5) Using a representation of the state seal by a person who is not an officeholder in
8 political advertising that is not otherwise misleading;
- 9 (6) Filing a late campaign finance report that is not a report due 30 or 8 days before an
10 election or a special pre-election report, and the alleged violations do not substantially
11 affect disclosure;
- 12 (7) Filing an incomplete or corrected campaign finance report that is not a report due 30
13 or 8 days before an election or a special pre-election report if:
- 14 (A) the total amount of incomplete or incorrectly reported political contributions
15 does not exceed the lesser of 10% of the total amount of political contributions on
16 the corrected report, or \$5,000;
- 17 (B) the total amount of incomplete or incorrectly reported political expenditures
18 does not exceed the lesser of 10% of the total amount of political expenditures on
19 the corrected report, or \$5,000; or
- 20 (C) the total amount of incomplete or incorrectly reported political contributions
21 or political expenditures does not exceed the amount of the filing fee for a place
22 on the ballot for the office sought or held by the respondent during the period
23 covered by the report at issue, or, if there is not a set filing fee, \$500;
- 24 (8) Filing an incomplete or corrected campaign finance report if the incomplete or
25 corrected information is not misleading and does not substantially affect disclosure,
26 including:
- 27 (A) the filer’s full name, address, office sought, or office held;
- 28 (B) the identity and date of the election for which the report is filed;
- 29 (C) the campaign treasurer’s full name, address, or telephone number;
- 30 (D) the full name of each identified candidate or measure or classification by party
31 of candidates supported or opposed by a political committee;
- 32 (E) the full name of each identified officeholder or classification by party of
33 officeholders assisted by a political committee;

- 1 (F) the amount of total political contributions maintained as of the last day of the
2 reporting period, if the error is a de minimis error as defined by §20.50 of this
3 title;
- 4 (G) the purpose of a political expenditure; or
- 5 (H) the period covered by the report;
- 6 (9) Failure to timely file a campaign treasurer appointment if, before filing the campaign
7 treasurer appointment, the total amount of political contributions accepted does not
8 exceed \$2,500 and the total amount of political expenditures made or authorized does not
9 exceed \$2,500;
- 10 (10) Failure to disclose information related to an out-of-state political committee required
11 by §20.29 or §22.7 of this title if the total amount of political contributions accepted from
12 the committee does not exceed \$10,000 and the contributions are otherwise properly
13 disclosed;
- 14 (11) Failure to disclose the principal occupation, job title, or employer of a contributor if
15 the total amount of political contributions accepted from the contributor does not exceed
16 \$15,000 and the contributions are otherwise properly disclosed;
- 17 (12) As a general-purpose committee, making a political contribution to another general-
18 purpose committee without including in its campaign treasurer appointment the name of
19 the recipient committee before making the contribution, if the contributing committee
20 properly disclosed the contribution;
- 21 (13) Failure to file a termination report required by §20.317 or §20.417 of this title if the
22 period covered by the termination report is included in a subsequently filed report;
- 23 (14) Filing a campaign finance report without using the form prescribed by the
24 commission if the report:
- 25 (A) discloses all the information required by chapter 254 of the Election Code and
26 this title;
- 27 (B) is substantially similar in size and format to the form prescribed by the
28 commission; and
- 29 (C) is not misleading and does not substantially affect disclosure;
- 30 (15) Making a political contribution prohibited by §253.1611, Election Code, if the
31 contribution does not exceed the limits by more than \$1,000 and the amount in excess is
32 returned to the contributor; or
- 33 (16) Failure to timely respond to a sworn complaint if the response is no more than 30
34 days late and the respondent shows good cause for the late response.
- 35 (b) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government
36 Code may include allegations against a respondent for:

1 (1) Typographical or incomplete information on a campaign finance report that is not
2 misleading or does not substantially affect disclosure;

3 (2) Filing an incomplete or corrected campaign finance report if:

4 (A) the total amount of incomplete or incorrectly reported political contributions
5 does not exceed the lesser of 5% of the total amount of political contributions on
6 the corrected report, or \$2,500; or

7 (B) the total amount of incomplete or incorrectly reported political expenditures
8 does not exceed the lesser of 5% of the total amount of political expenditures on
9 the corrected report, or \$2,500; or

10 (3) Filing an incomplete or inaccurate campaign finance report by a general-purpose
11 committee if, during the period covered by the report and during each of the two reporting
12 periods preceding the period covered by the report, the committee did not:

13 (A) accept political contributions totaling \$3,000 or more;

14 (B) accept political contributions from a single person totaling \$1,000 or more; or

15 (C) make political expenditures totaling \$3,000 or more.

16 (c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government
17 Code, if the executive director determines that all the alleged violations are technical, clerical, or
18 de minimis under subsection (a) of this section, the executive director may enter into an
19 assurance of voluntary compliance with the respondent. Before entering into an assurance of
20 voluntary compliance, the executive director may require a respondent to correct the violations.

21 (d) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government
22 Code, if the executive director determines that all the alleged violations are technical, clerical, or
23 de minimis under subsection (b) of this section, the executive director may enter into an agreed
24 resolution with the respondent. Before entering into an agreed resolution, the executive director
25 may require a respondent to correct the violations.

26 (e) An assurance of voluntary compliance or an agreed resolution entered into under this section
27 is confidential under §571.140 of the Government Code.

28 (f) An assurance of voluntary compliance or an agreed resolution entered into under this section
29 may include a penalty not to exceed \$500.

30 **§12.83. Preliminary Review.**

31 (a) A complainant or respondent must respond to written questions not later than 15 business
32 days after receiving the written questions. The executive director may grant an extension of the
33 time period for good cause shown.

34 (b) If the commission staff submits written questions to a respondent, the 120-day deadline for
35 the commission to propose an agreement to the respondent or dismiss the complaint (provided in
36 section 571.1242(g) of the Government Code) is tolled beginning on the date the commission

1 sends the written questions and resets on the date the commission receives the respondent’s
2 written response.

3 (c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to
4 section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to
5 propose an agreement to the respondent or dismiss the complaint (provided in section
6 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the
7 commission for the subpoena and resets on either:

8 (1) the date the commission rejects the staff’s application for a subpoena;

9 (2) the date the person to whom the subpoena is directed complies with the subpoena; or

10 (3) the date the commission receives a final ruling on a person’s failure or refusal to
11 comply with a subpoena that is reported to a district court pursuant to section 571.137(c)
12 of the Government Code.

13 (d) If the commission staff proposes to a respondent an agreement to settle a complaint that would
14 be effective upon approval by the commission and the respondent, the 120-day deadline for the
15 commission to propose an agreement to the respondent or dismiss the complaint (provided in
16 section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed
17 agreement, commission staff must submit the proposed agreement to the commission to seek final
18 approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement,
19 the matter shall be set for a preliminary review hearing at the next commission meeting for which
20 notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before
21 the date of a commission meeting, the matter shall be set for a preliminary review hearing at the
22 next commission meeting thereafter.

23
24 (e) During a preliminary review, commission staff may present documents or evidence, make
25 recommendations, or otherwise communicate with commissioners outside the presence of the
26 respondent for the purpose of investigating and resolving a sworn complaint.

27 (f) Commission staff may not communicate with a commissioner outside the presence of the
28 respondent for the purpose of influencing a decision on a pending sworn complaint after the
29 complaint has been scheduled for a preliminary review hearing and notice of the hearing has been
30 sent to the respondent.

31 **Subchapter D. PRELIMINARY REVIEW HEARING**

32 **§12.84. Notice of Preliminary Review Hearing.**

33 (a) Commission staff shall provide notice of a preliminary review hearing to a respondent and
34 complainant at least 45 days before the date of the hearing and must include:

35 (1) the date, time, place, and nature of the hearing;

36 (2) a statement of the legal authority and jurisdiction under which the hearing is to be
37 held;

1 (3) a reference to the particular sections of the statutes and rules involved; and

2 (4) a short and plain statement of the factual matters asserted.

3 (b) Commission staff shall provide to a respondent at least 30 days before the date of the hearing:

4 (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the
5 nature of the testimony expected to be given by each witness to be called at the hearing;
6 and

7 (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

8 (c) The respondent shall provide to commission staff the contents described by subsections (b)(1)
9 and (b)(2) of this section at least 30 days before the date of the hearing. If a respondent or
10 commission staff fail to comply with this section, the commission may reschedule the hearing or
11 proceed with the hearing and exclude at the hearing evidence, documents, and testimony
12 provided by the respondent or commission staff, as applicable, but such failure may be excused
13 upon a showing of good cause.

14 **§12.85. Preliminary Review Hearing.**

15 (a) Commission staff and the respondent may present any relevant evidence at a preliminary
16 review hearing, including examination and cross-examination of witnesses.

17 (b) Commission staff and the respondent may present an opening and closing statement at a
18 preliminary review hearing.

19 **§12.86. Motions for Continuance.**

20 (a) Contents of a motion for continuance. A request to postpone a preliminary review hearing must
21 be in writing and include the specific reasons and supporting evidence for the continuance and the
22 dates of any previous motions for continuance.

23 (b) Date of filing. Motions for continuance must be received by the Commission no later than 21
24 days before the date of the proceeding or must provide good cause with supporting evidence for
25 presenting the motion after that time. If the presiding officer finds good cause has been
26 demonstrated, the presiding officer may consider a motion that is not timely filed.

27 (c) Responses to motions for continuance. Responses to motions for continuance must be in writing
28 and include the date the complaint was filed and the number of previous requests to postpone filed
29 in the case. Unless otherwise ordered or allowed by the presiding officer, responses to motions for
30 continuance must be made no later than seven business days after receipt of the motion.

31 (d) Rulings on motions for continuance. A motion for continuance is not granted until it has been
32 ruled on by the presiding officer, even if the motion is uncontested or agreed. A case is subject to
33 default under §12.23 of this chapter for a party's failure to appear at a scheduled hearing in which
34 a motion for continuance has not been ruled on by the presiding officer.

1 **§12.87. Resolution of Preliminary Review Hearing.**

2 (a) At the conclusion of a preliminary review hearing in which the commission finds credible
3 evidence of a violation:

4 (1) commission staff shall send to the respondent a proposed resolution within 14
5 days; and

6 (2) not later than 30 days after the respondent receives the proposed resolution, or
7 by a later date determined by the commission, commission staff must receive from
8 the respondent:

9 (A) the proposed resolution signed by the respondent;

10 (B) a written counter offer; or

11 (C) a written request that the matter be set for a formal hearing.

12 (b) If the respondent does not comply with subsection (a)(2) of this section, commission staff
13 may request that the commission order a formal hearing.

14 (c) Commission staff shall report to the commission any written counter offer, staff's
15 recommendation to accept or reject a counter offer, if any, or any written request that a matter be
16 set for a formal hearing received from the respondent under subsection (a)(2) of this section.

17 (d) After a written counter offer or a written request that a matter be set for a formal hearing is
18 reported to the commission, the commission by record vote of at least six commissioners shall:

19 (1) accept the respondent's counter offer, if any; or

20 (2) determine the complaint cannot be resolved and settled and order a formal
21 hearing.

22 (e) The executive director shall dismiss a complaint if the commission does not order a formal
23 hearing within 180 days after the conclusion of a preliminary review hearing.

24 (f) This section may not be construed as limiting the commission's authority to agree to the
25 settlement of a complaint under section 571.121 of the Government Code, including sending a
26 revised proposed resolution to a respondent.

27 **Subchapter E. FORMAL HEARING**

28 **Division 1. General Procedures**

29 **§12.101. Application and Construction.**

30 The proceedings of a formal hearing shall be conducted in accordance with this subchapter,
31 Chapter 571 of the Government Code, and Subchapters C-H, Chapter 2001, of the Government

1 Code (the Administrative Procedure Act) only to the extent they are consistent with Chapter 571.
2 In the event of a conflict, Chapter 571 controls.

3 **§12.102. Order of Formal Hearing.**

4 As soon as practicable after the commission orders a formal hearing, the executive director shall
5 provide to the parties to the complaint, and to the complainant, a copy of the commission's
6 decision to order the hearing. The decision shall include the date, time, and place of the hearing
7 and be signed by the presiding officer.

8 **§12.103. Notice of Formal Hearing.**

9 (a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at
10 least 60 days before the date of the hearing and must include, in addition to the contents required
11 by section 571.126(b) of the Government Code:

12 (1) the date, time, place, and nature of the hearing;

13 (2) a statement of the legal authority and jurisdiction under which the hearing is to be
14 held;

15 (3) a reference to the particular sections of the statutes and rules involved; and

16 (4) a short and plain statement of the factual matters asserted.

17 (b) Commission staff shall provide to a respondent and complainant at least 30 days before the
18 date of the hearing:

19 (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the
20 nature of the testimony expected to be given by each witness to be called at the hearing;
21 and

22 (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

23 (c) The respondent shall provide to commission staff the contents described by subsections (b)(1)
24 and (b)(2) of this section. The contents must be received by commission staff at least 14 days
25 before the date of the hearing. If a respondent or commission staff fail to comply with this
26 section, the commission may reschedule the hearing or proceed with the hearing and exclude at
27 the hearing evidence, documents, and testimony provided by the respondent or commission staff,
28 as applicable, but such failure may be excused upon a showing of good cause.

29 **§12.117. Formal Hearing: Venue.**

30 When the commission orders a formal hearing the commission shall decide whether the formal
31 hearing will be held before the commission or before the State Office of Administrative
32 Hearings.

1 **§12.119. Resolution after a Formal Hearing.**

2 The executive director shall dismiss a complaint if the commission fails to adopt a motion under
3 section 571.132 of the Government Code. The dismissal shall state the complaint was dismissed
4 because there were insufficient commission votes to find that there was or was not a violation of
5 law.

6 **Division 2. Scheduling, Filing, and Service**

7 **§12.121. Prehearing Conferences.**

8 The presiding officer may order that one or more prehearing conferences be held to address any
9 matters prior to the formal hearing, including motions for discovery or subpoenas, motions for
10 sanction, or other matters related to the hearing. The commission shall provide such an order to
11 the parties and the complainant within 5 business days after the decision is made. The order shall
12 include the date, time, and place of the conference and a list of the matters to be addressed at the
13 conference.

14 **§12.123. Scheduling Orders.**

15 (a) The following deadlines apply to a prehearing conference or formal hearing, as applicable:

16 (1) All motions must be filed with the commission no later than 30 days before the date of
17 the conference or hearing;

18 (2) All responses to motions must be filed with the commission no later than 14 days
19 before the date of the conference or hearing; and

20 (3) All replies to responses must be filed with the commission no later than 7 days before
21 the date of the conference or hearing.

22 (b) A scheduling order containing the deadlines under this section shall be included with the
23 notice required by section 571.126 of the Government Code. The presiding officer may amend a
24 scheduling order upon the request of a party for good cause shown. A decision by the presiding
25 officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to
26 the parties to a hearing within 5 business days after the decision is made.

27 (c) The presiding officer may deny a party's motions, responses, or replies or deny a party's
28 evidence from being admitted into the record of the hearing if the party violates a scheduling
29 order.

30 **§12.125. Filing of Documents.**

31 (a) Motions, responses, and other documents in a formal hearing must be filed with the
32 Commission:

33 (1) by mail addressed to the commission at P.O. Box 12070, Austin, Texas 78711- 2070;

34 (2) by hand-delivery to the commission at 201 East 14th Street, 10th Floor;

1 (3) by fax to the commission at (512) 463-5777; or

2 (4) by email to a dedicated filing address.

3 (b) All documents must clearly indicate the sworn complaint number and the name of the
4 respondent for which it is filed.

5 (c) Time of filing. With respect to documents filed by mail, fax, or hand-delivery, the time and
6 date of filing shall be determined by the file stamp affixed by the commission. With respect to
7 documents filed by email, the time and date of filing is the electronic time stamp affixed by the
8 commissions email system. Documents received when the commission is closed shall be deemed
9 filed the next business day.

10 (d) Non-conforming documents. The commission may not refuse to file a document that fails to
11 conform with this chapter. When a filed document fails to conform to this rule, the executive
12 director or presiding officer may identify the errors to be corrected and state a deadline.

13 **§12.127. Service of Documents.**

14 (a) Service on all parties. On the same date a document is filed with the commission, a copy shall
15 also be sent to each party or the party's authorized representative by hand-delivery; by regular,
16 certified, or registered mail; by email, upon agreement of the parties; or by fax.

17 (b) Certificate of service. A person filing a document shall include a certificate of service that
18 certifies compliance with this section.

19 (1) A certificate of service shall be sufficient if it substantially complies with the
20 following example: "Certificate of Service: I certify that on {date}, a true and correct
21 copy of this {name of document} has been sent to {name of opposing party or authorized
22 representative for the opposing party} by {specify method of delivery, e.g., email, regular
23 mail, fax, certified mail.} {Signature}"

24 (2) If a filing does not certify service, the commission may:

25 (A) return the filing;

26 (B) send a notice of noncompliance to all parties, stating the filing will not be
27 considered until all parties have been served; or

28 (C) send a copy of the filing to all parties.

29 (c) Presumed time of receipt of served documents. The following rebuttable presumptions shall
30 apply regarding a party's receipt of documents served by another party:

31 (1) If a document was hand-delivered to a party, the commission shall presume that the
32 document was received on the date of filing at the commission.

33 (2) If a document was served by courier-receipted overnight delivery, the commission
34 shall presume that the document was received no later than the next business day after
35 filing at the commission.

1 (3) If a document was served by regular, certified, or registered mail, or non-overnight
2 courier-receipted delivery, the commission shall presume that it was received no later
3 than three days after mailing.

4 (4) If a document was served by fax or email before 5:00 p.m. on a business day, the
5 commission shall presume that the document was received on that day; otherwise, the
6 commission shall presume that the document was received on the next business day.

7 (d) Burden on sender. The sender has the burden of proving date and time of service.

8 **Division 3. Powers and Duties of Commission and Presiding Officer**

9 **§12.131. Powers and Duties of the Presiding Officer.**

10 (a) Presiding officer's authority and duties. The presiding officer shall have the authority and
11 duty to:

12 (1) conduct a full, fair, and efficient hearing;

13 (2) take action to avoid unnecessary delay in the disposition of the proceeding;

14 (3) maintain order; and

15 (4) rule on prehearing matters.

16 (b) Presiding officer's powers. The presiding officer shall have the power to regulate the hearing,
17 and the conduct of the parties and authorized representatives, including the power to:

18 (1) administer oaths;

19 (2) take testimony, including the power to question witnesses and to request the presence
20 of a witness from a state agency;

21 (3) rule on admissibility and other questions of evidence;

22 (4) rule on discovery issues;

23 (5) issue orders pursuant to this chapter;

24 (6) exclude irrelevant, immaterial, or unduly repetitious testimony;

25 (7) reasonably limit the time for presentations of evidence or argument;

26 (8) order parties to submit legal memoranda and proposed findings of fact and
27 conclusions of law; and

28 (9) reopen the record when justice requires, if the commission has not issued a final order.

1 **§12.133. Orders from the Commission.**

2 (a) The presiding officer has authority to issue orders to control the conduct and scope of the
3 proceeding, including orders to:

4 (1) Rule on motions;

5 (2) Impose sanctions;

6 (3) Establish deadlines;

7 (4) Schedule and conduct pre-hearing or post-hearing conferences;

8 (5) Require the prefiling of exhibits and testimony;

9 (6) Set out requirements for participation in the case; and

10 (7) Take other steps conducive to a fair and efficient formal hearing.

11 (b) Record of rulings. Rulings not made orally at a recorded prehearing conference or hearing
12 shall be in writing and issued to all parties of record.

13 (c) Consolidation or joinder for hearing. The presiding officer may order that cases be
14 consolidated or joined for hearing if:

15 (1) there are common issues of law or fact; and

16 (2) consolidation or joint hearing will promote the fair and efficient handling of the
17 matters.

18 (d) Severance of issues. The presiding officer may order severance of issues if separate hearings
19 on the issues will promote the fair and efficient handling of the matters.

20 **Division 5. Pleadings and Motions**

21 **§12.151. Required Form of Pleadings.**

22 (a) Content generally. Written requests for action in a formal hearing shall be typewritten or
23 printed legibly on 8-1/2 x 11-inch paper and timely filed with the commission. Photocopies are
24 acceptable if copies are clear and legible. All filings shall contain or be accompanied by the
25 following:

26 (1) the name of the party seeking action;

27 (2) the sworn complaint number;

28 (3) the parties to the case and their status as commission staff or respondent;

29 (4) a concise statement of the type of relief, action, or order desired and identification of
30 the specific reasons for and facts to support the action requested;

1 (5) a certificate of service, as required by §12.127(b)(1) of this chapter;

2 (6) any other matter required by statute or rule; and

3 (7) the signature of the submitting party or the party’s authorized representative.

4 (b) Amendment or supplementation of pleadings. A party may amend or supplement its pleadings
5 as follows:

6 (1) If a notice of a hearing or other documents provided to the complainant or respondent
7 under section 571.126(b)(2) of the Government Code contain a material defect, the
8 commission may correct the notice or other document and deliver it to the complainant
9 and respondent as soon as practicable and in the same manner as the original notice. If the
10 respondent does not receive the correction at least 10 days before the date of the hearing,
11 the presiding officer may by order reschedule the hearing. The executive director shall
12 notify the parties and the complainant of the date, time, and place of the hearing as soon
13 as practicable.

14 (2) As to all other matters in a pleading, an amendment or supplementation that includes
15 information material to the substance of the hearing, requests for relief, changes to the
16 scope of the hearing, or other matters that unfairly surprise other parties may not be filed
17 later than seven days before the date of the hearing, except by agreement of all parties or
18 by permission of the presiding officer.

19 **§12.153. Motions, Generally.**

20 (a) Purpose and effect of motions. To make a request, including to obtain a ruling, order, or any
21 other procedural relief, a party shall file a written motion. The motion shall describe specifically
22 the action requested and the basis for the requested action. Unless otherwise specified in this
23 chapter, a motion is not granted until it has been ruled on by the presiding officer or commission,
24 as applicable, even if the motion is uncontested or agreed.

25 (b) General requirements for motions. Except as provided in this chapter, or unless otherwise
26 ordered by the presiding officer, all motions shall:

27 (1) be filed in writing no later than the applicable deadline; except, for good cause
28 demonstrated in the motion, the presiding officer may consider a motion filed after
29 that time or presented orally at a hearing;

30 (2) include a certificate of conference that complies substantially with one of the
31 following examples:

32 (A) Example one: “Certificate of Conference: I certify that I conferred with {name
33 of other party or other party’s authorized representative} on {date} about this
34 motion. {Succinct statement of other party’s position on the action sought
35 and/or a statement that the parties negotiated in good faith but were unable to
36 resolve their dispute before submitting it to the commission for resolution.}
37 Signature.”; or

1 (B) Example two: “Certificate of Conference: I certify that I made reasonable but
2 unsuccessful attempts to confer with {name of other party or other party’s
3 authorized representative} on {date or dates} about this motion. {Succinctly
4 describe these attempts.} Signature.”

5 (3) include a reference in the motion’s title to a request for a hearing on the motion if the
6 moving party seeks a hearing; and

7 (4) include a proposed order sought by the moving party.

8 (c) Responses to motions. Except as otherwise provided in this chapter or as ordered or allowed
9 by the commission, responses to motions shall be in writing and filed by the applicable deadline.
10 However, if the presiding officer finds good cause has been shown, responses to written motions
11 may be presented orally at hearing.

12 (d) Other motions. In addition, other types of motions are addressed in other sections of this
13 chapter. If there is a conflict between this section and a requirement found in another section
14 relating to a specific type of motion, the more specific provision applies.

15 **§12.155. Motions for Continuance and to Extend Time.**

16 (a) Contents of a motion for continuance. A request to postpone or delay a hearing or prehearing
17 conference shall include:

18 (1) a statement of the number of motions for continuance previously filed in the case by
19 each party;

20 (2) the specific reason for the continuance;

21 (3) whether the movant is available if the hearing or prehearing conference is continued to
22 the next tentatively scheduled commission meeting;

23 (4) a certificate of conference that complies substantially with one of the examples set out
24 in §12.153(b)(2) of this subchapter.

25 (b) Contents of a motion to extend time. A request for more time to file a document or respond to
26 discovery shall include:

27 (1) a statement of the number of extension requests previously sought in the case by the
28 movant;

29 (2) the specific reason for the request;

30 (3) a proposed date for the deadline the movant seeks to extend; and

31 (4) a certificate of conference that complies substantially with one of the examples set out
32 in §12.153(b)(2) of this subchapter.

33 (c) Date of filing. Motions for continuance or to extend time shall be filed no later than five days
34 before the date of the proceeding or deadline at issue or shall state good cause for presenting the

1 motion after that time. If the presiding officer finds good cause has been demonstrated, the
2 presiding officer may consider a motion filed after that time or presented orally at the proceeding.

3 (d) Date of service. Motions for continuance or extension shall be served in accordance with
4 §12.127 of this chapter. However, a motion for continuance that is filed five days or less before
5 the date of the proceeding shall be served:

6 (1) by hand-delivery, fax, or email on the same day it is filed with the commission, if
7 feasible; or

8 (2) if same-day service is not feasible, by overnight delivery on the next business day.

9 (e) Responses to motions for continuance. Responses to motions for continuance shall be in
10 writing, except a response to a motion for continuance made on the date of the proceeding may
11 be presented orally at the proceeding. Unless otherwise ordered or allowed by the presiding
12 officer, responses to motions for continuance shall be made by the earlier of:

13 (1) three days after receipt of the motion; or

14 (2) the date and time of the proceeding.

15 (f) Responses to motions to extend time. Unless otherwise ordered by the presiding officer,
16 responses to motions for extension of a deadline are due three days after receipt of the motion.

17 (g) A motion for continuance or extension of time is not granted until it has been ruled on by the
18 presiding officer, even if the motion is uncontested or agreed. A case is subject to default or
19 dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance
20 has not been ruled on by the presiding officer, even when the motion is agreed or unopposed.

21 **Division 6. Hearings and Prehearing Conferences**

22 **§12.161. Time Allotted to Parties.**

23 The presiding officer shall determine the amount of time allotted to each party for the
24 presentation of its case to the commission. Upon request of a party, the presiding officer may
25 adjust the time allotted for good cause shown or for a violation of a rule under this chapter. A
26 determination shall be made by order or orally during the course of the proceeding.

27 **§12.163. Presentation of Evidence.**

28 (a) Presentation by parties. After the resolution of all prehearing matters, each party shall make
29 its presentation during the formal hearing. Commission staff shall make the first opening
30 statement. The respondent or respondent's authorized representative shall then make an opening
31 statement, should the respondent wish to do so at that time. The respondent may reserve the
32 opening statement until the presentation of the respondent's case.

33 (b) Following opening statements, commission staff may present evidence in its case. At the
34 conclusion of the presentation of the evidence, commission staff may rest. The respondent or the
35 respondent's authorized representative may then make an opening statement, or, if an opening

1 statement has already been made, present evidence in its defense of the allegations raised in the
2 notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the
3 respondent may rest.

4 (c) After both parties have rested their case, commission staff shall make a closing argument. The
5 respondent may then make a closing argument. Commission staff may then make a reply.

6 (d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be
7 closed and the case will be turned over to the members of the commission for deliberation and
8 decision.

9 **§12.165. Rules of Evidence.**

10 (a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a
11 formal hearing only to the extent consistent with Chapter 571 of the Government Code.

12 (b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the
13 Government Code.

14 **§12.167. Numbering of Exhibits.**

15 (a) Each exhibit to be offered shall first be numbered by the offering party.

16 (b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the
17 commission and to each party present at the hearing unless otherwise ordered by the presiding
18 officer.

19 (c) Excluded exhibits. An exhibit excluded from evidence will be considered withdrawn by the
20 offering party and will be returned to the party.

21 (d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-
22 numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

23 **Division 7. Disposition of Formal Hearing**

24 **§12.171. Standard of Proof.**

25 At a formal hearing, the commission shall determine by preponderance of the evidence whether a
26 violation within the jurisdiction of the commission has occurred.

27 **§12.173. Default Proceedings.**

28 (a) If a respondent to whom a notice of hearing with factual allegations is served or provided fails
29 to appear for the hearing, the commission may proceed in the respondent's absence on a default
30 basis.

31 (b) A default proceeding under this section requires adequate proof of the following:

1 (1) the notice of hearing to the respondent stated that the allegations listed in the notice
2 could be deemed admitted and that the relief sought in the notice of hearing might be
3 granted by default against the party that fails to appear at the hearing;

4 (2) the notice of hearing satisfies the requirements of sections 2001.051, 2001.052, and
5 571.126 of the Government Code; and

6 (3) the notice of hearing was:

7 (A) received by the defaulting party; or

8 (B) as authorized by Chapter 571 of the Government Code and this chapter, sent
9 by regular mail or by certified mail, restricted delivery, return receipt requested, to
10 the party's last known address as shown by the commission's records.

11 (c) In the absence of adequate proof to support a default, the presiding officer shall continue the
12 hearing and direct commission staff to provide adequate notice of hearing. If adequate notice is
13 unable to be provided, the commission may dismiss the complaint.

14 (d) Upon receiving the required showing of proof to support a default, the commission may by
15 vote deem admitted the allegations in the notice of hearing and issue a default decision.

16 **§12.174. Summary Disposition.**

17 (a) Granting of summary disposition. Summary disposition shall be granted on all or part of a
18 complaint's allegations if the allegations, the motion for summary disposition, and the summary
19 disposition evidence show that there is no genuine issue as to any material fact and that the moving
20 party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly
21 set out in the motion. Summary disposition is not permitted based on the ground that there is no
22 evidence of one or more essential elements of a claim or defense on which the opposing party
23 would have the burden of proof at the formal hearing.

24 (b) Deadlines. Unless otherwise ordered by the presiding officer:

25 (1) A party may file a motion for summary disposition at any time after the commission
26 orders a formal hearing, but the motion must be filed at least 45 days before a scheduled
27 hearing on the merits.

28 (2) The response and opposing summary disposition evidence shall be filed no later than
29 15 days after the filing of the motion.

30 (c) Contents of Motion. A motion for summary disposition shall include the contents listed below.
31 A motion may be denied for failure to comply with these requirements.

32 (1) The motion shall state the specific issues upon which summary disposition is sought
33 and the specific grounds justifying summary disposition.

34 (2) The motion shall also separately state all material facts upon which the motion is based.
35 Each material fact stated shall be followed by a clear and specific reference to the
36 supporting summary disposition evidence.

1 (3) The first page of the motion shall contain the following statement in at least 12-point,
2 bold-face type: “Notice to parties: This motion requests the commission to decide some or
3 all of the issues in this case without holding an evidentiary hearing on the merits. You have
4 15 days after the filing of the motion to file a response. If you do not file a response, this
5 case may be decided against you without an evidentiary hearing on the merits.”

6 (d) Responses to motions.

7 (1) A party may file a response and summary disposition evidence to oppose a motion for
8 summary disposition.

9 (2) The response shall include all arguments against the motion for summary disposition,
10 any objections to the form of the motion, and any objections to the summary disposition
11 evidence offered in support of the motion.

12 (e) Summary disposition evidence.

13 (1) Summary disposition evidence may include deposition transcripts; interrogatory
14 answers and other discovery responses; pleadings; admissions; affidavits; materials
15 obtained by discovery; matters officially noticed; stipulations; authenticated or certified
16 public, business, or medical records; and other admissible evidence. No oral testimony shall
17 be received at a hearing on a motion for summary disposition.

18 (2) Summary disposition may be based on uncontroverted written testimonial evidence of
19 an interested witness, or of an expert witness as to subject matter concerning which the
20 presiding officer must be guided solely by the opinion testimony of experts, if the evidence
21 is clear, positive and direct, otherwise credible and free from contradictions and
22 inconsistencies, and could have been readily controverted.

23 (3) All summary disposition evidence offered in support of or in opposition to a motion for
24 summary disposition shall be filed with the motion or response. Copies of relevant portions
25 of materials obtained by discovery that are relied upon to support or oppose a motion for
26 summary disposition shall be included in the summary disposition evidence.

27 (f) Proceedings on motions.

28 (1) The presiding officer may order a hearing on a motion for summary disposition and the
29 commission may rule on the motion without a hearing.

30 (2) The affirmative vote of six commissioners is necessary to grant summary disposition
31 finding a violation by a preponderance of the evidence.

32 (3) If summary disposition is granted on all contested issues in a case, the record shall close
33 on the date ordered by the presiding officer or on the later of the filing of the last summary
34 disposition arguments or evidence, the date the summary disposition response was due, or
35 the date a hearing was held on the motion. The commission shall issue a final decision and
36 written report, including a statement of reasons, findings of fact, and conclusions of law in
37 support of the summary disposition rendered.

1 (4) If summary disposition is granted on some but not all of the contested issues in a case,
2 the commission shall not take evidence or hear further argument upon the issues for which
3 summary disposition has been granted. The commission shall issue an order:

4 (A) specifying the facts about which there is no genuine issue;

5 (B) specifying the issues for which summary disposition has been granted; and

6 (C) directing further proceedings as necessary. If an evidentiary hearing is held
7 on the remaining issues, the facts and issues resolved by summary disposition
8 shall be deemed established, and the hearing shall be conducted accordingly.
9 After the evidentiary hearing is concluded, the commission shall include in the
10 final decision a statement of reasons, findings of fact, and conclusions of law in
11 support of the partial summary disposition rendered.

12 **§12.175. Resolution of Formal Hearing.**

13 (a) As provided by section 571.139 of the Government Code, the commission may deliberate in
14 private regarding the resolution of a sworn complaint or motion, including a dismissal of a
15 complaint, a determination of whether a violation within the jurisdiction of the commission has
16 occurred, and an appropriate penalty upon a finding of a violation. As provided by section
17 2001.061 of the Government Code, the presiding officer may permit the executive director,
18 general counsel, or other employee of the commission who has not participated in a hearing in
19 the complaint for the purpose of using the special skills or knowledge of the agency and its staff
20 in evaluating the evidence.

21 (b) The presiding officer may announce the commission's decision on the resolution of a sworn
22 complaint or motion after the conclusion of a formal hearing.

23 (c) The commission should issue a final order within 60 days after the conclusion of a formal
24 hearing.

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter A. General Rules

§6.1. Definitions.

The following words and terms, when used in this Part, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).
- (2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning Administrative Procedure).
- (3) Agency--The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.
- (4) Commission--The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a and in the Government Code, Chapter 571.
- (5) Document--A report, complaint, response, letter, or any other written material.
- (6) Executive director--The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.
- (7) Filer--A person required to file a report with the commission or a local filing authority in accordance with a law enforced by the commission.
- (8) Individual--A human being who has been born and is alive.
- (9) Local filing authority--A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with a law enforced by the commission.
- (10) Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).
- (11) Open Records Law--The Government Code, Chapter 552 (concerning Open Records).
- (12) Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.
- (13) Postmark--A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.
- (14) Report--Any document or other information required to be filed under this title.
- (15) Staff--Employees of the commission, hired by the commission or the executive director.

1 (16) Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and
2 Campaigns).

3 **§6.3. Purpose and Construction of Rules.**

4 (a) This title is adopted for the following purposes:

5 (1) to establish and explain the practice and procedures followed by the commission and its
6 employees performing its duties under the law; and

7 (2) to provide specific guidance necessary to encourage and ensure full compliance with all
8 laws administered and enforced by the commission.

9 (b) A person's obligation to comply with a requirement or prohibition established by statute
10 exists even if this title is silent concerning a statutory requirement.

11 (c) This title shall always be construed in a manner consistent with all applicable constitutional
12 and statutory requirements.

13 **§6.9. Computation of Time.**

14 (a) This section states how to compute a period of time prescribed or allowed by this Part, by any
15 order of the agency, or by any applicable statute. The day of the act, event, or default after which
16 the designated period of time begins to run is not included. The last day of the period is included.
17 However, if the last day of the time period would not be a business day as defined by Section
18 552.0031 of the Texas Government Code, the period is extended until the next day that is a
19 business day.

20 (b) A time period described by statute or this Part to be a certain number of business days is
21 calculated under subsection (a) of this section without including any day within that time period
22 that is not a business day as defined by Section 552.0031 of the Texas Government Code.

23 (c) A document required to be filed or served by a deadline established by statute or this title is
24 filed or served when it is actually received. A document may be deemed to be filed or served
25 when it is deposited with the United States Postal Service, properly addressed to the recipient,
26 with all postage prepaid. The date of the postmark on the envelope for the document is presumed
27 to be the date the document was deposited with the United States Postal Service.

28 (d) A document filed or served by delivery to the United States Postal Service is presumed to have
29 been filed before 5:00 p.m. on the date indicated by the postmark.

30

1 **Subchapter B. Officers and Employees of the Commission**

2 **§6.21. Officers of the Commission.**

3 (a) The commission’s chair and vice chair shall be elected annually by majority vote of the
4 commission. The election shall take place at the first commission meeting held after June 1 of
5 each year. Each officer shall serve until his or her successor is selected.

6 (b) The chair and vice chair shall be members of different political parties.

7 (c) The chair and vice chair may be re-elected; however, if a new chair is elected he or she
8 should be a member of a different political party than the former chair.

9 (d) The person elected to serve as the commission’s chair shall also serve as the commission’s
10 presiding officer. The presiding officer shall preside at all meetings of the commission. While
11 presiding, the presiding officer shall direct the order of the meeting, appoint committees and
12 persons to chair committees, recognize persons to be heard at hearings, set reasonable and
13 necessary time limits for speakers, and take other actions to clarify issues and preserve order.
14 Unless the chair appoints a presiding officer pro tem pursuant to subsection (f) of this rule, the
15 vice chair shall perform all duties of the presiding officer when the chair is absent.

16 (e) In addition to other powers identified elsewhere in this Part, the presiding officer may
17 perform the following actions of the commission:

18 (1) Sign previously approved subpoenas and orders;

19 (2) Schedule hearings and meetings; and

20 (3) Timely respond to matters on behalf of the commission, including litigation matters, when
21 action is required before the next scheduled meeting.

22 (f) The chair may appoint a commissioner as presiding officer pro tem to preside over a hearing
23 held by the commission.

24 (g) If the chair or vice chair is unable to participate in a matter pending before the commission,
25 either may select a replacement from among the other commissioners to exercise their authority
26 and fulfill their duties under this Part and any other applicable law.

27 **§6.23. Commission Staff.**

28 (a) The executive director is the chief administrative officer of the agency. The executive
29 director shall attend commission meetings at the pleasure of the commission and serve as liaison
30 between the commission and the public.

31 (b) The commission delegates to the executive director all powers conferred on the commission
32 by the Act or other law, except for any power that requires a vote of the commission or approval
33 of the chair. Any action taken by the executive director shall conform with all applicable law,
34 including this Part and other policies that may be adopted from time to time by the commission.

1 (c) The executive director shall attend commission meetings unless specifically excused by the
2 commission and shall perform any duties or assignments established by the commission.

3 (d) The general counsel shall attend commission meetings unless specifically excused by the
4 commission, shall provide legal advice to the commission and executive director, and shall
5 perform any duties delegated by the executive director.

6 **§6.25. Appointment and Operation of Advisory Committees.**

7 (a) The commission by resolution may establish one or more committees to obtain the
8 viewpoints and advice of interested persons with respect to any contemplated rulemaking. The
9 membership or method of appointment of members to a committee established under this section
10 shall be specified in the resolution that creates the committee. A committee created under this
11 section is advisory only.

12 (b) In addition to committees established under subsection (a) of this section, with the consent of
13 other members of the commission the presiding officer may from time to time establish and
14 appoint commission members and others to a special committee to exercise advisory duties
15 specified by the presiding officer.

16 **Subchapter C. Commission Meetings**

17 **§6.37. Open Meetings.**

18 (a) Except as provided by subsection (b) of this section, each meeting of the commission shall be
19 conducted in accordance with the Open Meetings Law.

20 (b) A commission meeting limited to consideration and action on matters relating to sworn
21 complaints is not subject to the Open Meetings Law.

22 **§6.35. Called Meetings.**

23 The executive director shall give notice to each commissioner of the date and time of each
24 meeting. Notice under this section shall be provided a reasonable amount of time in advance of
25 the meeting.

26 **§6.39. Meeting Agenda.**

27 (a) The agenda shall consist of agenda items proposed by the executive director prior to the
28 meetings for which the agenda is specified. At a reasonable time before filing a copy of the
29 agenda as required by the Open Meetings Law, the executive director shall provide a copy of the
30 proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the
31 executive director shall provide a copy of the proposed agenda to any two commissioners.

32 (b) The presiding officer, a commission member with the consent of the presiding officer, or any
33 two commissioners may direct the executive director to include an item on the agenda if it
34 complies with the posting requirements specified by law. The presiding officer may direct the

1 executive director to remove an item included on a proposed agenda unless that item is requested
2 by two commission members other than the presiding officer.

3 (c) A member of the public may ask the executive director to place an item on a proposed
4 agenda. The executive director shall advise the commission of the request and may include the
5 item on a proposed agenda.

6 **§6.41. Public Hearing and Participation.**

7 (a) A public hearing on an agenda item shall be conducted when required by law or requested by
8 a commissioner.

9 (b) The executive director shall prepare and maintain a plan for providing special assistance
10 (including without limitation translation of the English language) to persons who request such
11 assistance for the purpose of attending, observing, or participating in a commission meeting.

12 **§6.43. Speakers Addressing the Commission.**

13 (a) The executive director shall prescribe a speaker registration form. Each person who wishes to
14 speak at a commission meeting shall provide the following information:

15 (1) the speaker's name;

16 (2) the person or entity the speaker represents, if any;

17 (3) the agenda item the speaker wishes to address; and

18 (4) his or her mailing address and telephone number.

19 (b) Any person who addresses the commission shall state his or her name and the name of the
20 person or entity the speaker represents, if any, for purposes of the recording under §6.47 of this
21 title (relating to Recording of Meeting; Minutes).

22 **§6.45. Order and Conduct of Commission Meeting.**

23 (a) The presiding officer shall preside at all meetings of the commission. The presiding officer
24 shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard,
25 set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards
26 of conduct, and take any other action necessary in his or her discretion to clarify issues and
27 preserve order.

28 (b) Commission meetings shall be conducted in accordance with rules and procedures set forth in
29 the most recently published edition of Robert's Rules of Order.

30 (c) With unanimous consent of all commissioners present, any provision or requirement of this
31 section may be waived.

32 (d) No action of the commission that otherwise complies with law shall be void or invalid
33 because the action was taken in violation of a rule or procedure established by this section.

1 **§6.47. Recording of Meeting; Minutes.**

2 (a) All meetings of the commission shall be recorded. The recording shall be the official record
3 of actions taken at the meeting.

4 (b) The presiding officer shall announce the names of each commissioner who makes or seconds
5 a motion to be voted upon by the commission. After the vote has been taken, the presiding
6 officer shall announce the vote in a manner that identifies how each commissioner voted, if a
7 commissioner abstained, or if a commissioner was not present for the vote.

8 (c) The executive director shall prepare minutes after each meeting that reflect all commission
9 votes and other actions taken during the meeting. The minutes shall be approved by vote of the
10 commission at a subsequent commission meeting.

11 **Subchapter D. RULEMAKING PROCEDURES**

12 **§6.61. Comments on Proposed Rules.**

13 (a) Written comments on a proposed rule received at the agency office shall be reviewed by the
14 executive director and made available to each member of the commission before final action to
15 adopt the rule.

16 (b) Oral or written comments on a proposed rule may also be offered at the public hearing
17 required by §6.63 of this title (relating to Public Hearings on Proposed Rules).

18 **§6.63. Public Hearings on Proposed Rules.**

19 The commission will hold a public hearing on each proposed rule before it takes final action to
20 adopt the rule. Unless otherwise scheduled, the public hearing will be held immediately before
21 the commission votes on the proposed rule.

22 **Subchapter E. AGENCY FEES AND CHARGES**

23 **§6.81. Charges; Payment of Money; Refunds.**

24 (a) Any fee or charge payable to the agency shall be paid in advance, unless satisfactory
25 arrangements for subsequent payment are approved by the executive director.

26 (b) Money paid by actual mistake or in excess, such as a payment not required by law, may be
27 refunded. A mere change of purpose after the payment of money, as when a party desires to
28 withdraw a filing, will not entitle a party to a refund.

29 **§6.83. Copying Charges.**

30 The charge for providing copies of documents shall be in accordance with rules established by
31 the General Services Commission or other applicable law.

1 **§6.87. Waiver of Fees for Copies or Publications.**

2 The executive director may waive or reduce a charge established by this subchapter when, in his
3 or her discretion, a waiver or reduction of the fee is in the public interest because furnishing the
4 information primarily benefits the general public.

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6

1 **Chapter 12. Sworn Complaints**

2 **Subchapter A. RESPONDENT'S RIGHTS**

3 **§12.01. Notice**

4 (a) A notice required to be sent to a complainant under chapter 571 of the Government Code
5 shall be sent to the address most recently provided to the commission by the complainant.

6 (b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall
7 be sent to the address provided to the commission by the complainant or, if the respondent has
8 provided a different address, to the address most recently provided to the commission by the
9 respondent.

10 (c) A person entitled to receive notice may waive that right by filing a written waiver with the
11 executive director.

12 (d) A respondent or complainant in a complaint may waive the right under section 571.032 of the
13 Government Code to receive written notices related to the complaint by registered or certified
14 mail, restricted delivery, return receipt requested, and may agree to receive written notices
15 related to the complaint by first class mail, electronic mail, or other means.

16 **§12.02. Representation by Counsel**

17 (a) A respondent has the right to be represented by counsel retained by the respondent in any
18 proceeding of a complaint.

19 (b) Counsel representing a respondent shall enter an appearance with the commission that
20 contains the counsel's mailing address, email address, telephone number, and state bar number.
21 If the respondent's counsel is not licensed to practice law in Texas, the representative must show
22 authority to appear as the respondent's counsel.

23 (c) The commission may, through the approval of its executive director, admit an attorney who is
24 a resident of and licensed to practice law in another state, and who is not an active member of the
25 State Bar of Texas, to represent a respondent before the commission if the nonresident attorney
26 complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules
27 Governing Admission to the Bar of Texas and files a motion, accompanied by proof of
28 compliance with those provisions, with the commission requesting to be admitted to represent a
29 respondent.

30 (d) This rule does not allow a person to engage in the unauthorized practice of law.

31 **§12.03. Ex Parte Communications**

32 Neither commission enforcement staff nor respondents may communicate with commissioners or
33 the general counsel outside the presence of the other party for the purpose of influencing a
34 decision on a pending sworn complaint after the commission accepts jurisdiction over an
35 allegation.

1 **§12.04. Agreements to be in Writing**

2 No stipulation or agreement with respect to any matter in a complaint shall be effective unless it
3 has been:

4 (1) reduced to writing and signed by each person making the stipulation or agreement, or by that
5 person's authorized representative, and filed with the commission; or

6 (2) entered into the record during the course of a hearing.

7 **Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

8 **§12.11. Deadline for Filing a Complaint**

9 (a) The commission has no jurisdiction over an alleged violation:

10 (1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at
11 the time the commission would vote to initiate a preliminary review of a matter, the allegation
12 would be barred from criminal prosecution by operation of the applicable statute of limitations;
13 or

14 (2) if the alleged violation is not also a criminal offense and if the allegation is based on facts
15 that occurred more than three years before the date the complaint is filed or the date the
16 commission would vote to initiate a preliminary review of a matter.

17 (b) For purposes of this section, a complaint is not filed unless it complies with the requirements
18 of section 571.122 of the Government Code.

19 **§12.12. File Date for a Complaint**

20 The file date for a complaint is the date the complaint is received by the commission.

21 **§12.13. Description of Violation**

22 (a) If a complaint does not include the specific rule or provision of law alleged to have been
23 violated, the complaint must clearly and concisely describe facts that, if true, would constitute a
24 violation of a law administered and enforced by the commission.

25 (b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient
26 if the correct citation can reasonably be ascertained by the commission. When a complaint
27 erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or
28 provision of law in the notice provided to the respondent.

29 **§12.14. Statement of Facts**

30 (a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice
31 of the law violated and of the manner and means by which the violation allegedly occurred and
32 to afford the respondent a basis on which to prepare a response.

1 (b) The facts alleged may adopt by reference the content of documents submitted with the
2 complaint. However, the allegations must reasonably identify those portions of the document that
3 are relevant to the alleged violation.

4 **§12.15. Commission Initiated Complaint**

5 (a) Commission staff may gather or present documents or evidence, make recommendations, and
6 otherwise communicate with commissioners in contemplation of, or in preparation for, a
7 commission initiated preliminary review. Commissioners may request documents, evidence, or
8 recommendations, and otherwise communicate with commission staff in contemplation of, or in
9 preparation for, a commission initiated preliminary review.

10 (b) A preliminary review initiated by the commission under section 571.124(b) of the
11 Government Code is deemed to be a complaint for purposes of all further proceedings under
12 chapter 571 of the Government Code and of this chapter.

13 (c) Documents or evidence gathered by the commission and commission staff in contemplation
14 of, or in preparation for, a commission initiated preliminary review are related to the processing
15 of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the
16 Government Code.

17 (d) Discussions between the commission and commission staff regarding gathering documents or
18 evidence in contemplation of, or in preparation for, a commission initiated preliminary review
19 are related to the processing of a preliminary review or motion for the purposes of sections
20 571.139 and 571.140 of the Government Code.

21 **Subchapter C. INVESTIGATION AND DISCOVERY**

22 **§12.21. Response to Notice of Complaint**

23 (a) The response required by section 571.1242 of the Government Code must:

24 (1) be in writing;

25 (2) admit or deny the allegations set forth in the complaint; and

26 (3) be signed by the respondent.

27 (b) If a respondent does not submit a response within the time period prescribed by section
28 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty
29 for failure to file a response.

30 (c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of
31 this section, the commission may issue an order imposing a penalty for failure to file a complete
32 response.

1 **§12.22. Written Questions**

2 (a) A complainant or respondent must respond to written questions not later than 15 business
3 days after receiving the written questions.

4 (b) If the commission staff submits written questions to a respondent, the **120-day deadline** for
5 the commission to propose an agreement to the respondent or dismiss the complaint (provided in
6 section 571.1242(g) of the Government Code) is tolled beginning on the date the commission
7 sends the written questions and resets on the date the commission receives the respondent's
8 written response.

9 **§12.23. Production of Documents During Preliminary Review**

10 (a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the
11 Government Code, commission staff must send to the person from whom records are sought a
12 written request for the production or inspection of documents or other tangible things that:

13 (1) specifies the items to be produced or inspected, either by individual item or by category, and
14 describes with reasonable particularity each item and category; and

15 (2) provides a reasonable amount of time, but not less than 30 days, to comply with the request.

16 (b) The person from whom records are sought must produce or allow the inspection of
17 documents or other tangible things within the person's possession, custody or control within the
18 time provided in the request, or submit in writing, as appropriate:

19 (1) objections to those records that are unreasonable, improper, or unnecessary to investigate the
20 complaint; or

21 (2) that, after a diligent search, no items have been identified that are responsive to the request.

22 (c) Commission staff shall provide to the commission any response it receives to its request for
23 production or inspection when applying for a subpoena under §571.137(a-1) of the Government
24 Code.

25 (d) If the commission staff applies to the commission for the issuance of a subpoena pursuant to
26 section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to
27 propose an agreement to the respondent or dismiss the complaint (provided in section
28 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the
29 commission for the subpoena and resets on either:

30 (1) the date the commission rejects the staff's application for a subpoena;

31 (2) the date the person to whom the subpoena is directed complies with the subpoena; or

32 (3) the date the commission receives a final ruling on a person's failure or refusal to comply with
33 a subpoena that is reported to a district court pursuant to section 571.137(c) of the Government
34 Code.

1 **§12.24. Proposed Settlement Before Preliminary Review Hearing**

2 If commission staff proposes to a respondent an agreement to settle a complaint that would be
3 effective upon approval by the commission and the respondent, the 120-day deadline for the
4 commission to propose an agreement to the respondent or dismiss the complaint (provided in
5 section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed
6 agreement, commission staff must submit the proposed agreement to the commission to seek final
7 approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement,
8 the matter shall be set for a preliminary review hearing at the next commission meeting for which
9 notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before
10 the date of a commission meeting, the matter shall be set for a preliminary review hearing at the
11 next commission meeting thereafter.

12 **§12.25. Subpoenas Issued by Commission**

13 (a) A subpoena issued under §571.137 of the Government Code shall specify the date, time,
14 place, and manner for execution of the subpoena.

15 (b) A subpoena issued under section 571.137 of the Government Code that requires a person to
16 provide testimony shall be served on that person at least 10 business days before the date the
17 subpoena is to be executed.

18 (c) A subpoena sought by commission staff under section 571.137(a) of the Government Code
19 must be requested in writing and may be approved and issued by the unanimous agreement of the
20 chair and vice chair. If either the chair or vice chair does not approve the request, then staff may
21 seek approval through a vote of the commission, in which case the subpoena will be issued upon
22 the affirmative vote of five commissioners.

23 **§12.26. Subpoenas Issued by Counsel for the Respondent**

24 (a) This section applies only to subpoenas issued by a respondent's counsel under section
25 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing)
26 or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the
27 Government Code.

28 (b) A subpoena must be issued in the name of "The State of Texas" and must:

29 (1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which
30 the witness is summoned to appear;

31 (2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics
32 Commission;

33 (3) state the date on which the subpoena is issued;

34 (4) identify the person to whom the subpoena is directed;

- 1 (5) state the time and place of the preliminary review hearing or formal hearing at which the
2 subpoena directs the person to appear;
- 3 (6) identify the respondent at whose instance the subpoena is issued and the respondent's
4 attorney of record;
- 5 (7) specify with reasonable particularity any documents with which the person to whom the
6 subpoena is directed shall appear;
- 7 (8) state the text of § 12.31(i) of this chapter; and
- 8 (9) be signed by the attorney issuing the subpoena.
- 9 (c) A subpoena must command the person to whom it is directed to appear and give testimony
10 at:
- 11 (1) a preliminary review hearing; or
- 12 (2) a formal hearing.
- 13 (d) A subpoena may only direct a person to appear, with or without documents, and give
14 testimony at a preliminary review hearing or formal hearing before the commission.
- 15 (e) A subpoena may be issued only by the counsel of record for a respondent in a sworn
16 complaint proceeding before the commission against that respondent.
- 17 (f) Service.
- 18 (1) Manner of service. A subpoena may be served at any place within the State of Texas by any
19 sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of
20 age or older. A subpoena must be served by delivering a copy to the witness and tendering to
21 that person any fees required by law. If the witness is a party and is represented by an attorney
22 of record in the sworn complaint proceeding, the subpoena may be served on the witness's
23 attorney of record.
- 24 (2) Deadline for service. A subpoena must be served upon the person required to appear at least
25 21 days before the preliminary review hearing or formal hearing at which the person is required
26 to appear. The subpoena and proof of service must be filed with the commission within three
27 days of its service on the person required to appear.
- 28 (3) Proof of service. Proof of service must be made by filing either:
- 29 (A) the witness's signed written memorandum attached to the subpoena showing that the
30 witness accepted the subpoena; or
- 31 (B) a statement by the person who made the service stating the date, time, and manner of service,
32 and the name of the person served.
- 33 (g) Response.

- 1 (1) Except as provided in this subsection, a person served with a subpoena must comply with
2 the command stated therein unless discharged by the commission or by the party summoning
3 such witness. A person commanded to appear and give testimony must remain at the place of
4 hearing from day to day until discharged by the commission or the party summoning the
5 witness.
- 6 (2) If a subpoena commanding testimony is directed to a corporation, partnership, association,
7 governmental agency, or other organization, and the matters on which examination is requested
8 are described with reasonable particularity, the organization must designate one or more persons
9 to testify on its behalf as to matters known or reasonably available to the organization.
- 10 (3) A person commanded to appear with documents must produce the documents as they are
11 kept in the usual course of business or must organize and label them to correspond with the
12 categories in the demand.
- 13 (4) A person commanded to appear at a hearing must file any motion to quash the subpoena or
14 objection to a requirement to appear with certain documents with the commission no later than
15 the 14th day before the hearing at which the person is directed to appear. Commission staff may
16 move to quash a subpoena or object to appearance with certain documents in the same manner
17 as the person commanded to appear by the subpoena. The filer of a motion to quash or objection
18 to a requirement to appear with certain documents must serve the motion or objection on the
19 proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email,
20 or by other such manner as the presiding officer of the commission may direct, no later than the
21 deadline for filing the motion to quash or objection to appearance with documents with the
22 commission. After affording commission staff and the person commanded to appear an
23 opportunity to move to quash the subpoena or object to appearance with certain documents, and
24 affording the proponent of the subpoena an opportunity to respond to the motion to quash or
25 objection to appearance with documents, the commission's presiding officer shall rule on a
26 motion to quash or objection to appearance with documents.
- 27 (5) A person commanded to attend and give testimony, or to produce documents or things, at a
28 preliminary review hearing or formal hearing may object to giving testimony or producing
29 documents at the time and place specified for the hearing, rather than under subsection (g)(4)
30 of this section.
- 31 (6) A party's appearance with a document in response to a subpoena directing the party to appear
32 with the document authenticates the document for use against that party in any proceeding
33 before the commission unless the party appearing with the document objects to the authenticity
34 of the document, or any part of it, at the time of the party's appearance, stating the specific basis
35 for objection. An objection must have a good faith factual and legal basis. An objection made
36 to the authenticity of only part of a document does not affect the authenticity of the remainder.
37 If objection is made, the party attempting to use the document should be given a reasonable
38 opportunity to establish its authenticity. The requirement that the commission provide a
39 reasonable opportunity to establish the document's authenticity may be satisfied by the
40 opportunity to present a witness to authenticate the document at a subsequent hearing before the
41 commission.

1 (h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing
2 undue burden or expense on the person served. In ruling on a motion to quash or objection to
3 appearance with documents, the presiding officer must provide a person served with a subpoena
4 an adequate time for compliance, protection from disclosure of privileged material or
5 information, and protection from undue burden or expense. The presiding officer may impose
6 reasonable conditions on compliance with a subpoena, including compensating the witness for
7 undue hardship.

8 **Subchapter D. PLEADINGS AND MOTIONS**

9 **Division 1 – General Rules**

10 **§12.31. Purpose and Effect of Motions**

11 To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall
12 file a written motion. The motion shall describe specifically the action requested and the basis for
13 the requested action. Unless otherwise specified in this chapter, a motion is not granted until it
14 has been ruled on by the executive director, the presiding officer, or by vote of the commission,
15 as applicable, even if the motion is uncontested or agreed.

16 **§12.32. Required Form of Motions**

17 Written requests for commission action shall be typewritten or printed legibly on 8-1/2 x 11-inch
18 paper and timely filed with the commission. Photocopies are acceptable if copies are clear and
19 legible. All filings shall contain or be accompanied by the following:

- 20 (1) the name of the party seeking action;
- 21 (2) the sworn complaint number;
- 22 (3) the parties to the case and their status as commission staff or respondent;
- 23 (4) a concise statement of the type of relief, action, or order desired and identification of the
24 specific reasons for and facts to support the action requested;
- 25 (5) the signature of the submitting party or the party's authorized representative;
- 26 (6) a proposed order sought by the moving party; and
- 27 (7) a reference in the motion's title to a request for a hearing on the motion if the moving party
28 seeks a hearing.

29 **§12.33. Certificate of Conference**

30 Except as provided in this chapter or unless otherwise ordered by the presiding officer, all
31 motions shall include a certificate of conference that complies substantially with one of the
32 following examples:

1 (1) Example one: “Certificate of Conference: I certify that I conferred with {name of other party
2 or other party’s authorized representative} on {date} about this motion. {Succinct statement of
3 other party’s position on the action sought and/or a statement that the parties negotiated in good
4 faith but were unable to resolve their dispute before submitting it to the commission for
5 resolution.} Signature.”; or;

6 (2) Example two: “Certificate of Conference: I certify that I made reasonable but unsuccessful
7 attempts to confer with {name of other party or other party’s authorized representative} on {date
8 or dates} about this motion. {Succinctly describe these attempts.} Signature.”

9 **§12.34. Motion Deadlines**

10 (a) The following deadlines apply to motions in which a hearing is either sought by a party or
11 scheduled by the presiding officer:

12 (1) motions must be filed with the commission no later than 30 days before the date of the
13 hearing;

14 (2) responses to motions must be filed with the commission no later than 14 days before the date
15 of the hearing; and

16 (3) replies to responses must be filed with the commission no later than 7 days before the date of
17 the hearing.

18 (b) A scheduling order containing the deadlines under this section shall be included with the
19 notice required by section 571.126 of the Government Code. The presiding officer may amend a
20 scheduling order upon the request of a party for good cause shown. A decision by the presiding
21 officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to
22 the parties to a hearing within 5 business days after the decision is made.

23 (c) Except as otherwise provided in this chapter or as ordered or allowed by the commission,
24 responses to motions shall be in writing and filed by the applicable deadline. However, if the
25 presiding officer finds good cause has been shown, responses to written motions may be
26 presented orally at hearing.

27 **(d) The presiding officer may deny a party’s motions, responses, or replies or deny a
28 party’s evidence from being admitted into the record of the hearing if the party fails to
29 timely file.**

30 **§12.35. Method of Filing**

31 (a) Motions, responses, and other documents in a sworn complaint proceeding must be filed with
32 the commission by emailing it to sworncomplaints@ethics.state.tx.us and including the
33 following information in the subject line:

34 (1) the sworn complaint number; and

35 (2) the title of the document.

1 (b) The time and date of filing is the electronic time stamp affixed by the commissions email
2 system. Documents received when the commission is closed shall be deemed filed the next
3 business day.

4 **§12.36. Service of Documents**

5 (a) On the same date a document is filed with the commission, a copy shall also be sent to each
6 party or the party’s authorized representative by hand-delivery; by regular, certified, or registered
7 mail; or by email, upon agreement of the parties.

8 (b) A person filing a document shall include a certificate of service that certifies compliance with
9 this section.

10 (1) A certificate of service shall be sufficient if it substantially complies with the following
11 example: “Certificate of Service: I certify that on {date}, a true and correct copy of this {name of
12 document} has been sent to {name of opposing party or authorized representative for the
13 opposing party} by {specify method of delivery, e.g., email, regular mail, fax, certified mail.}
14 {Signature}”

15 (2) If a filing does not certify service, the commission may:

16 (A) return the filing;

17 (B) send a notice of noncompliance to all parties, stating the filing will not be considered until all
18 parties have been served; or

19 (C) send a copy of the filing to all parties.

20 (c) The following rebuttable presumptions shall apply regarding a party’s receipt of documents
21 served by another party:

22 (1) If a document was hand-delivered to a party, the commission shall presume that the
23 document was received on the date of filing at the commission.

24 (2) If a document was served by courier-receipted overnight delivery, the commission shall
25 presume that the document was received no later than the next business day after filing at the
26 commission.

27 (3) If a document was served by regular, certified, or registered mail, or non-overnight courier-
28 receipted delivery, the commission shall presume that it was received no later than three days
29 after mailing.

30 (4) If a document was served by fax or email before 5:00 p.m. on a business day, the commission
31 shall presume that the document was received on that day; otherwise, the commission shall
32 presume that the document was received on the next business day.

33 (d) The sender has the burden of proving date and time of service.

1 **§12.37. Non-conforming Documents**

2 When a filed document fails to conform to the requirements of this subchapter, the executive
3 director may either:

4 **(1) reject the filing, identify the errors to be corrected and state a deadline for correction;**
5 **or**

6 **(2) accept the filing.**

7 **§12.38. Amended and Supplemental Filings**

8 A party may amend or supplement its pleadings as follows:

9 (1) If a notice of a hearing or other documents provided to the complainant or respondent under
10 section 571.126(b)(2) of the Government Code contain a material defect, the commission may
11 correct the notice or other document and deliver it to the complainant and respondent as soon as
12 practicable and in the same manner as the original notice. If the respondent does not receive the
13 correction at least 10 days before the date of the hearing, the presiding officer may by order
14 reschedule the hearing. The executive director shall notify the parties and the complainant of the
15 date, time, and place of the hearing as soon as practicable.

16 (2) As to all other matters, an amendment or supplementation that includes information material
17 to the substance of a hearing, requests for relief, changes to the scope of a hearing, or other
18 matters that unfairly surprise other parties may not be filed later than seven days before the date
19 of the hearing, except by agreement of all parties or by permission of the presiding officer.

20 **§12.39. Application of this Subchapter**

21 If there is a conflict between this section and a requirement found in another section relating to a
22 specific type of motion, the more specific provision applies.

23 **Subchapter D. PLEADINGS AND MOTIONS**

24 **Division 2 – Types of Motions**

25 **§12.41. Motion to Extend Time**

26 (a) The executive director may extend a deadline pursuant to §571.136 of the Government Code.

27 (b) A request for more time to file a document or respond to discovery shall include:

28 (1) a statement of the number of extension requests previously sought in the case by the movant;

29 (2) the specific reason for the request; and

30 (3) a proposed date for the deadline the movant seeks to extend.

1 (c) Motions to extend time shall be filed no later than five days before the date of the deadline at
2 issue or shall state good cause for presenting the motion after that time. If the executive director
3 finds good cause has been demonstrated, the executive director may consider a motion filed after
4 that time.

5 (d) Unless otherwise ordered by the executive director, responses to motions for extension of a
6 deadline are due three days after receipt of the motion.

7 (e) A motion for continuance or extension of time is not granted until it has been ruled on by the
8 executive director, even if the motion is uncontested or agreed.

9 **§12.42. Motion for Continuance**

10 (a) The presiding officer may postpone or delay a hearing.

11 (b) A request to postpone or delay a hearing shall include:

12 (1) a statement of the number of motions for continuance previously filed in the case by the
13 movant;

14 (2) the specific reason for the request; and

15 (3) whether the movant is available if the hearing or prehearing conference is continued to the
16 next tentatively scheduled commission meeting.

17 (c) Motions for continuance shall be filed no later than five days before the date of the
18 proceeding or shall state good cause for presenting the motion after that time. If the presiding
19 officer finds good cause has been demonstrated, the presiding officer may consider a motion
20 filed after that time.

21 (d) Responses to motions for continuance shall be in writing, except a response to a motion for
22 continuance made on the date of the proceeding may be presented orally at the proceeding.
23 Unless otherwise ordered or allowed by the presiding officer, responses to motions for
24 continuance shall be made by the earlier of:

25 (1) three days after receipt of the motion; or

26 (2) the date and time of the proceeding.

27 (d) A motion for continuance is not granted until it has been ruled on by the presiding officer,
28 even if the motion is uncontested or agreed.

29 **§12.43. Motion to Dismiss**

30 (a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged
31 violation has no basis in law or fact. An alleged violation has no basis in law if the allegations,
32 if taken as true, together with inferences reasonably drawn from them do not constitute a
33 violation of a rule adopted by or a law administered and enforced by the commission. An alleged
34 violation has not basis in fact if no reasonable person could believe the facts alleged.

1 (b) A motion to dismiss must identify each alleged violation to which it is addressed, and must
2 state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

3 (c) The commission may, but is not required to, conduct an oral hearing on the motion to
4 dismiss. The commission may not consider evidence in ruling on the motion and must decide
5 the motion based solely on the facts alleged in the complaint, together with any complaint
6 exhibits permitted by commission rule or statute.

7 **§12.44. Motion for Summary Disposition**

8 (a) Summary disposition shall be granted on all or part of a complaint’s allegations if the
9 allegations, the motion for summary disposition, and the summary disposition evidence show that
10 there is no genuine issue as to any material fact and that the moving party is entitled to a decision
11 in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary
12 disposition is not permitted based on the ground that there is no evidence of one or more essential
13 elements of a claim or defense on which the opposing party would have the burden of proof at the
14 formal hearing.

15 (b) Unless otherwise ordered by the presiding officer:

16 (1) A party must file a motion for summary disposition at least 45 days before a scheduled hearing
17 on the merits.

18 (2) The response and opposing summary disposition evidence shall be filed no later than 15 days
19 after the filing of the motion.

20 (c) A motion for summary disposition shall include the contents listed below. A motion may be
21 denied for failure to comply with these requirements.

22 (1) The motion shall state the specific issues upon which summary disposition is sought and the
23 specific grounds justifying summary disposition.

24 (2) The motion shall also separately state all material facts upon which the motion is based. Each
25 material fact stated shall be followed by a clear and specific reference to the supporting summary
26 disposition evidence.

27 (3) The first page of the motion shall contain the following statement in at least 12-point, bold-
28 face type: “Notice to parties: This motion requests the commission to decide some or all of the
29 issues in this case without holding an evidentiary hearing on the merits. You have 15 days after
30 the filing of the motion to file a response. If you do not file a response, this case may be decided
31 against you without an evidentiary hearing on the merits.”

32 (d) Responses to motions.

33 (1) A party may file a response and summary disposition evidence to oppose a motion for summary
34 disposition.

1 (2) The response shall include all arguments against the motion for summary disposition, any
2 objections to the form of the motion, and any objections to the summary disposition evidence
3 offered in support of the motion.

4 (e) Summary disposition evidence.

5 (1) Summary disposition evidence may include deposition transcripts; interrogatory answers and
6 other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery;
7 matters officially noticed; stipulations; authenticated or certified public, business, or medical
8 records; and other admissible evidence. No oral testimony shall be received at a hearing on a
9 motion for summary disposition.

10 (2) Summary disposition may be based on uncontroverted written testimonial evidence of an
11 interested witness, or of an expert witness as to subject matter concerning which the presiding
12 officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive
13 and direct, otherwise credible and free from contradictions and inconsistencies, and could have
14 been readily controverted.

15 (3) All summary disposition evidence offered in support of or in opposition to a motion for
16 summary disposition shall be filed with the motion or response. Copies of relevant portions of
17 materials obtained by discovery that are relied upon to support or oppose a motion for summary
18 disposition shall be included in the summary disposition evidence.

19 (f) Proceedings on motions.

20 (1) The presiding officer may order a hearing on a motion for summary disposition and the
21 commission may rule on the motion without a hearing.

22 (2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a
23 violation by a preponderance of the evidence.

24 (3) If summary disposition is granted on all contested issues in a case, the record shall close on the
25 date ordered by the presiding officer or on the later of the filing of the last summary disposition
26 arguments or evidence, the date the summary disposition response was due, or the date a hearing
27 was held on the motion. The commission shall issue a final decision and written report, including
28 a statement of reasons, findings of fact, and conclusions of law in support of the summary
29 disposition rendered.

30 (4) If summary disposition is granted on some but not all of the contested issues in a case, the
31 commission shall not take evidence or hear further argument upon the issues for which summary
32 disposition has been granted. The commission shall issue an order:

33 (A) specifying the facts about which there is no genuine issue;

34 (B) specifying the issues for which summary disposition has been granted; and

35 (C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining
36 issues, the facts and issues resolved by summary disposition shall be deemed established, and the

1 hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the
2 commission shall include in the final decision a statement of reasons, findings of fact, and
3 conclusions of law in support of the partial summary disposition rendered.

4 **§12.45. Motion for Sanctions**

5 (a) The commission has the authority to impose appropriate sanctions against a party or its
6 representative for:

7 (1) filing a motion or pleading that is deemed by the commission to be groundless and brought:

8 (A) in bad faith;

9 (B) for the purpose of harassment; or

10 (C) for any other improper purpose, such as to cause unnecessary delay or needless increase in
11 the cost of the proceeding;

12 (2) abuse of the discovery process in seeking, making, or resisting discovery;

13 (3) failure to comply with a commission order; or

14 (4) violating §2.51 of this chapter.

15 (b) By record vote of at least six commissioners, the commission may issue an order imposing
16 sanctions when justified by party or representative behavior described in subsection (a) of this
17 section and after notice and opportunity for hearing. Sanctions may include:

18 (1) disallowing or limiting further discovery by the offending party;

19 (2) charging all or part of the expenses of discovery against the offending party or its
20 representatives;

21 (3) deeming designated facts be admitted for purposes of the proceeding;

22 (4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting
23 the party from introducing designated matters into the record;

24 (5) disallowing in whole or in part requests for relief by the offending party and excluding
25 evidence in support of those requests; and

26 (6) striking motions or testimony in whole or in part.

27 (c) In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of
28 Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

29 (1) the timing of the complaint with respect to when the facts supporting the alleged violation
30 became known or should have become known to the complainant, and with respect to the date of

- 1 any pending election in which the respondent is a candidate or is involved with a candidacy, if
2 any;
- 3 (2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of
4 participation by the complainant in publicizing the fact that a complaint was filed with the
5 commission;
- 6 (3) the existence and nature of any relationship between the respondent and the complainant
7 before the complaint was filed;
- 8 (4) if respondent is a candidate for election to office, the existence and nature of any relationship
9 between the complainant and any candidate or group opposing the respondent;
- 10 (5) any evidence that the complainant knew or reasonably should have known that the allegations
11 in the complaint were groundless; and
- 12 (6) any evidence of the complainant’s motives in filing the complaint.

13 **Subchapter E. HEARINGS**

14 **Division 1 – General Rules**

15 **§12.51. Conduct and Decorum**

- 16 (a) Parties, representatives, and other participants at a hearing shall conduct themselves with
17 dignity, show courtesy and respect for one another and for the commission, and follow any
18 additional guidelines of decorum prescribed by the presiding officer, including adherence to the
19 amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the
20 Texas Lawyer’s Creed promulgated by the Supreme Court of Texas and the Court of Criminal
21 Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme
22 Court of Texas.
- 23 (b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and
24 decorum.
- 25 (c) All objections, arguments, and other comments by parties shall be directed to the commission
26 and not to an opposing party.
- 27 (d) While a party is addressing the commission or questioning a witness, any other party shall
28 not interrupt for any purpose except to make a valid objection.
- 29 (e) Parties shall not approach the dais without leave of the presiding officer and must not lean on
30 the dais.
- 31 (f) Parties shall remain seated at the counsel table at all times except:
- 32 (1) when addressing the commission; and

- 1 (2) whenever it may be proper to handle documents, exhibits, or other evidence.
- 2 (g) Parties must question witnesses and deliver arguments to the commission while seated at the
3 counsel table or standing at the lectern. If a party seeks to question or argue from another
4 location, leave of the presiding officer must be requested and granted.
- 5 (h) Parties must request leave of the presiding officer to conduct a demonstration.
- 6 (i) The presiding officer may take appropriate action to maintain and enforce proper conduct and
7 decorum, including:
- 8 (1) issuing a warning;
- 9 (2) sanctioning a party pursuant to §12.33 of this chapter;
- 10 (3) excluding persons from the proceeding;
- 11 (4) recessing the proceeding; and
- 12 (5) clearing the hearing room of persons causing a disruption.

13 **§12.52. Private Deliberations**

14 As provided by section 571.139 of the Government Code, the commission may deliberate in
15 private regarding the resolution of a sworn complaint or motion, including a dismissal of a
16 complaint, a determination of whether a violation within the jurisdiction of the commission has
17 occurred, and an appropriate penalty upon a finding of a violation. As provided by section
18 2001.061 of the Government Code, the presiding officer may permit the executive director,
19 general counsel, or other employee of the commission who has not participated in a hearing in
20 the complaint for the purpose of using the special skills or knowledge of the agency and its staff
21 in evaluating the evidence.

22 **§12.53. Record of Rulings**

23 Rulings not made orally at a recorded hearing shall be in writing and issued to all parties of
24 record.

25 **Subchapter E. HEARINGS**

26 **Division 2 - Powers of the Presiding Officer**

27 **§12.61. Selection and Delegation of Presiding Officer**

- 28 (a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the
29 presiding officer for all hearings.
- 30 (b) The chair may appoint another commissioner to preside over a hearing held by the
31 commission.

1 **§12.62. Set Hearings**

2 The presiding officer may order that one or more hearings be held to address any matters
3 pending in a sworn complaint proceeding, including motions to dismiss, motions for discovery or
4 subpoenas, motions for sanctions, or any other matters related to the proceeding. The
5 commission shall provide such an order to the parties and the complainant within five business
6 days after the decision is made. The order shall include the date, time, and place of the hearing
7 and a list of the matters to be addressed at the hearing.

8 **§12.63. Consolidate or Sever Matters for Hearing**

9 (a) The presiding officer may order that cases be consolidated or joined for hearing if there are
10 common issues of law or fact and consolidation or joint hearing will promote the fair and
11 efficient handling of the matters.

12 (b) The presiding officer may order severance of issues if separate hearings on the issues will
13 promote the fair and efficient handling of the matters.

14 **§12.64. Conduct Hearings**

15 (a) The presiding officer shall have the authority and duty to conduct a full, fair, and efficient
16 hearing, including the power to:

17 (1) administer oaths;

18 (2) take testimony, including the power to question witnesses and to request the presence of a
19 witness from a state agency;

20 (3) require the prefiling of exhibits and testimony;

21 (4) exclude irrelevant, immaterial, or unduly repetitious testimony;

22 (5) reasonably limit the time for presentations of evidence or argument;

23 (6) reopen the record when justice requires, if the commission has not issued a final order; and

24 (7) take other steps conducive to a fair and efficient formal hearing.

25 **§12.65. Rule on Evidentiary Matters**

26 The presiding officer shall have the power to rule on admissibility and other questions of
27 evidence.

28 **§12.66. Sign Orders and Subpoenas**

29 The presiding officer may sign previously approved subpoenas and orders.

30

Subchapter E. HEARINGS

1 **Division 3 – Preliminary Review Hearings**

2 **§12.71. Notice of Preliminary Review Hearing**

3 (a) Commission staff shall provide notice of a preliminary review hearing to a respondent and
4 complainant at least 10 days before the date of the hearing and must include:

5 (1) the date, time, place, and nature of the hearing;

6 (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

7 (3) a reference to the particular sections of the statutes and rules involved; and

8 (4) a short and plain statement of the factual matters asserted.

9 (b) Commission staff shall provide to a respondent at least 10 days before the date of the hearing:

10 (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of
11 the testimony expected to be given by each witness to be called at the hearing; and

12 (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

13 (c) The respondent shall provide to commission staff the contents described by subsections (b)(1)
14 and (b)(2) of this section at least 5 days before the date of the hearing. If a respondent or
15 commission staff fail to comply with this section, the commission may reschedule the hearing or
16 proceed with the hearing and exclude at the hearing evidence, documents, and testimony
17 provided by the respondent or commission staff, as applicable, but such failure may be excused
18 upon a showing of good cause.

19 **§12.72. Preliminary Review Hearing**

20 (a) Commission staff and the respondent may present any relevant evidence at a preliminary
21 review hearing, including examination and cross-examination of witnesses.

22 (b) Commission staff and the respondent may present an opening and closing statement at a
23 preliminary review hearing.

24 **Subchapter E. HEARINGS**

25 **Division 4 – Formal Hearings**

26 **§12.81. Order of Formal Hearing**

27 As soon as practicable after the commission orders a formal hearing, the executive director shall
28 provide to the parties to the complaint, and to the complainant, a copy of the commission's
29 decision to order the hearing. The decision shall include the date, time, and place of the hearing
30 and be signed by the presiding officer.

1 **§12.82. Notice of Formal Hearing**

2 (a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at
3 least 60 days before the date of the hearing and must include, in addition to the contents required
4 by section 571.126(b) of the Government Code:

5 (1) the date, time, place, and nature of the hearing;

6 (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

7 (3) a reference to the particular sections of the statutes and rules involved; and

8 (4) a short and plain statement of the factual matters asserted.

9 (b) Commission staff shall file and provide to a respondent and complainant at least 30 days
10 before the date of the hearing:

11 (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of
12 the testimony expected to be given by each witness to be called at the hearing; and

13 (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

14 (c) The respondent shall file and provide to commission staff at least 14 days before the date of
15 the hearing:

16 (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of
17 the testimony expected to be given by each witness to be called at the hearing; and

18 (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

19 (d) If a respondent or commission staff fail to comply with this section, the commission may
20 reschedule the hearing or proceed with the hearing and exclude at the hearing evidence,
21 documents, and testimony provided by the respondent or commission staff, as applicable, but
22 such failure may be excused upon a showing of good cause.

23 **§12.83. Formal Hearing: Venue**

24 When the commission orders a formal hearing the commission shall decide whether the formal
25 hearing will be held before the commission or before the State Office of Administrative
26 Hearings.

27 **§12.84. Presentation of Evidence**

28 (a) After the resolution of all prehearing matters, each party shall make its presentation during
29 the formal hearing. Commission staff shall make the first opening statement. The respondent or
30 respondent's authorized representative shall then make an opening statement, should the
31 respondent wish to do so at that time. The respondent may reserve the opening statement until
32 the presentation of the respondent's case.

1 (b) Following opening statements, commission staff may present evidence in its case. At the
2 conclusion of the presentation of the evidence, commission staff may rest. The respondent or the
3 respondent’s authorized representative may then make an opening statement, or, if an opening
4 statement has already been made, present evidence in its defense of the allegations raised in the
5 notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the
6 respondent may rest.

7 (c) After both parties have rested their case, commission staff shall make a closing argument.
8 The respondent may then make a closing argument. Commission staff may then make a reply.

9 (d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be
10 closed and the case will be turned over to the members of the commission for deliberation and
11 decision.

12 **§12.85. Rules of Evidence**

13 (a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a
14 formal hearing only to the extent consistent with Chapter 571 of the Government Code.

15 (b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the
16 Government Code.

17 **§12.86. Numbering of Exhibits**

18 (a) Each exhibit to be offered shall first be numbered by the offering party.

19 (b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the
20 commission and to each party present at the hearing unless otherwise ordered by the presiding
21 officer.

22 (c) An exhibit excluded from evidence will be considered withdrawn by the offering party and
23 will be returned to the party.

24 (d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-
25 numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

26 **Subchapter F. RESOLUTIONS**

27 **§12.91. Agreed Resolutions**

28 (a) Upon the affirmative vote of six commissioners, the commission may enter into an agreed
29 resolution with a respondent to settle a complaint filed against the respondent, including an
30 assurance of voluntary compliance, a notice of reporting error, or an agreed order.

31 (b) An assurance of voluntary compliance:

32 (1) resolves a sworn complaint:

1 (A) with no determination that a violation within the jurisdiction of the commission has occurred,
2 if entered into before a preliminary review hearing is completed; or

3 (B) with a determination that all violations within the jurisdiction of the commission, when viewed
4 as a whole in consideration of any mitigating action taken by the respondent, are technical or de
5 minimis; and

6 (2) may include a civil penalty.

7 (c) A notice of reporting error resolves a complaint with a determination that all violations within
8 the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of
9 disclosure and may include a civil penalty in the form of an assessment fee.

10 (d) An agreed order resolves a sworn complaint with a determination that one or more violations
11 within the jurisdiction of the commission occurred and may include a civil penalty.

12 **§12.92. Resolution of Technical or De Minimis Allegations**

13 (a) Technical, clerical, or de minimis violations for purposes of §§571.0631 and 571.140 of the
14 Government Code means any violation of law under the TEC’s jurisdiction that neither
15 materially affects disclosure nor undermines public trust in government.

16 (b) Examples of technical, clerical, or de minimis violations include:

17 (1) Typographical or incomplete information on a campaign finance report that is not misleading
18 and does not materially affect disclosure;

19 (2) Failure to include a disclosure statement or a highway right-of-way notice on political
20 advertising;

21 (3) Failure of a non-incumbent to use the word “for” in a campaign communication that is not
22 otherwise misleading;

23 (4) Failure to file a timely campaign finance report or campaign treasurer appointment if the
24 alleged violations do not materially affect disclosure;

25 (5) Failure to timely respond to a sworn complaint if the respondent shows good cause for the
26 late response.

27 (c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government
28 Code, if the executive director determines that all of the alleged violations in the sworn
29 complaint are technical or de minimis, the executive director may enter into an assurance of
30 voluntary compliance with the respondent. Before entering into an assurance of voluntary
31 compliance, the executive director may require a respondent to correct the violations.

1 **§12.93. Default Proceedings**

2 (a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242 or
3 fails to appear for a formal hearing, the commission may, upon notice and hearing, proceed on a
4 default basis.

5 (b) A default proceeding under this section requires adequate proof of the following:

6 (1) the notice of hearing to the respondent stated that the allegations listed in the notice could be
7 deemed admitted and that the relief sought in the notice of hearing might be granted by default
8 against the party that fails to appear at the hearing;

9 (2) the notice of hearing satisfies the requirements of sections 2001.051 and 2001.052 of the
10 Government Code; and

11 (3) the notice of hearing was:

12 (A) received by the defaulting party; or

13 (B) sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the
14 party's last known address as shown by the commission's records.

15 (c) In the absence of adequate proof to support a default, the presiding officer shall continue the
16 hearing and direct commission staff to provide adequate notice of hearing. If adequate notice is
17 unable to be provided, the commission may dismiss the complaint.

18 (d) Upon receiving the required showing of proof to support a default, the commission may by
19 vote deem admitted the allegations in the notice of hearing and issue a default decision.

20 **§12.94. Final Orders after Formal Hearings**

21 (a) The commission should issue a final order within 60 days after the conclusion of a formal
22 hearing.

23 (b) The executive director shall dismiss a complaint if the commission fails to adopt a motion
24 under section 571.132 of the Government Code. The dismissal shall state the complaint was
25 dismissed because there were insufficient commission votes to find that there was or was not a
26 violation of law.

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Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.
The deleted language is indicated by [~~strikethrough~~] text.

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

§ 26.1. Disclosure Statement

(a) A disclosure statement that is required by §255.001, Election Code, must contain the words “political advertising” or any recognizable abbreviation, and must:

- (1) appear on one line of text or on successive lines of text on the face of the political advertising; or
- (2) be clearly spoken in the political advertising if the political advertising does not include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

- (1) the person who paid for the political advertising;
- (2) the political committee authorizing the political advertising; or
- (3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on:

- (1) campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical;
- (2) political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:
 - (A) is not an officeholder, candidate, or political committee; [~~and~~]
 - (B) did not make an expenditure exceeding \$100 in a reporting period for political advertising beyond the basic cost of hardware messaging software and bandwidth; and
 - (C) did not post or re-post the political advertising in return for consideration.

- (3) the Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder; or

1 (4) political advertising posted or re-posted by a person on an Internet website, provided
2 the advertising is posted with a link to a publicly viewable Internet webpage that:

3 (A) contains the disclosure statement; or

4 (B) is exempt from containing the disclosure statement under Subsection (c)(3).

5 (d) For the purposes of Subsection (c), an “Internet social media profile webpage” is an Internet
6 webpage on a website where members of the public may, for no charge, connect electronically
7 with other members of the public and share text, images, videos, and similar forms of
8 communications.

Text of Proposed Amendments

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The proposed new language is indicated by underlined text.
The deleted language is indicated by [strikethrough] text.

Chapter 18. GENERAL RULES CONCERNING REPORTS

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	PAC: Amount of contributions or expenditures permitted before TA is required	\$500	<u>\$1,080</u> [\$1,050]
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	\$25,000	<u>\$40,300</u> [\$38,990]
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	\$500	<u>\$1,110</u> [\$1,080]
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	\$100	\$220
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	\$500	<u>\$1,110</u> [\$1,080]
254.031(a)(1)	Contributions: Threshold over which more information is required	\$50	\$110
254.031(a)(2)	Loans: Threshold over which more information is required	\$50	\$110
254.031(a)(3)	Expenditures: Threshold over which more information is required	\$100	\$220
254.031(a)(5)	Contributions: Threshold at or below which more information is not required	\$50	\$110
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required	\$100	\$220
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required	\$100	\$140
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported	\$100	\$140
254.031(a)(11)	Investment Gain: Threshold over which more information is required	\$100	\$140
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	\$100	\$140

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required	\$50	\$110
254.0311(b)(2)	Caucus, loans: Threshold over which more information is required	\$50	\$110
254.0311(b)(3)	Caucus, expenditures: Threshold over which more information is required	\$50	\$110
254.0311(b)(4)	Caucus, contributions and expenditures: Threshold at or below which more information is not required	\$50	\$110
254.0312	Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance	\$500	<u>\$850</u> [\$820]
254.036	Electronic Filing Exemption: Threshold at or below which a filer may qualify	\$20,000	<u>\$33,910</u> [\$32,810]
254.038(a)	Daily Reports by certain candidates and PACs: Contribution threshold triggering report	\$1,000	<u>\$2,220</u> [\$2,150]
254.039	Daily Reports by GPACs: Contribution threshold triggering report	\$5,000	<u>\$7,600</u> [\$7,350]
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates)	\$1,000/\$15,000	<u>\$2,220/\$33,370</u> [\$2,150/\$32,280]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required	\$50	\$110
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required	\$500	<u>\$1,110</u> [\$1,080]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required	\$500	<u>\$1,110</u> [\$1,080]
254.095	Local officeholders, contributions: Threshold under which reporting is not required	\$500	<u>\$1,110</u> [\$1,080]
254.151(6)	GPAC, contributions: Threshold over which more information is required	\$50	\$110
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies	\$20,000	<u>\$32,240</u> [\$31,190]
254.1541(b)	GPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$100	\$220

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.156(1)	MPAC: Threshold over which contribution, lender and expenditure information is required	\$10	\$20
254.156(2)	MPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$20	\$40
254.181 254.182 254.183	Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports	\$500	<u>\$1,110</u> [\$1,080]
254.261	DCE filers: Threshold over which a report must be filed	\$100	\$160

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Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Lobbyist, expenditures: Threshold over which registration is required	\$500, by 1 Tex. Admin. Code §34.41	<u>\$970</u> [\$940]
305.003(2)	Lobbyist, compensation: Threshold over which registration is required	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,930</u> [\$1,870]
305.004(7)	Lobbying for political party: Threshold at or below which registration is not required	\$5,000	<u>\$11,120</u> [\$10,760]
305.005(g)(2)	Lobbyist: Compensation threshold	\$10,000	<u>Less than \$22,240</u> [Less than \$21,520]
305.005(g)(3)	Lobbyist: Compensation threshold	\$25,000	<u>\$22,240 to less than \$55,610</u> [\$21,520 to less than \$53,810]
305.005(g)(4)	Lobbyist: Compensation threshold	\$50,000	<u>\$55,610 to less than \$111,220</u> [\$53,810 to less than \$107,610]
305.005(g)(5)	Lobbyist: Compensation threshold	\$100,000	<u>\$111,220 to less than \$222,440</u> [\$107,610 to less than \$215,230]
305.005(g)(6)	Lobbyist: Compensation threshold	\$150,000	<u>\$222,440 to less than \$333,660</u> [\$215,230 to less than \$322,840]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(7)	Lobbyist: Compensation threshold	\$200,000	\$333,660 to less than \$444,880 [\$322,840 to less than \$430,450]
305.005(g)(8)	Lobbyist: Compensation threshold	\$250,000	\$444,880 to less than \$556,100 [\$430,450 to less than \$538,070]
305.005(g)(9)	Lobbyist: Compensation threshold	\$300,000	\$556,100 to less than \$667,320 [\$538,070 to less than \$645,680]
305.005(g)(10)	Lobbyist: Compensation threshold	\$350,000	\$667,320 to less than \$778,540 [\$645,680 to less than \$753,290]
305.005(g)(11)	Lobbyist: Compensation threshold	\$400,000	\$778,540 to less than \$889,760 [\$753,290 to less than \$860,910]
305.005(g)(12)	Lobbyist: Compensation threshold	\$450,000	\$889,760 to less than \$1,000,980 [\$860,910 to less than \$968,520]
305.005(g)(13)	Lobbyist: Compensation threshold	\$500,000	\$1,000,980 to less than \$1,112,200 [\$968,520 to less than \$1,076,130]
305.005(g-1)	Lobbyist: Compensation threshold	\$500,000	\$1,112,200 or more [\$1,076,130 or more]
305.0061(c)(3)	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed	\$50	\$110
305.0061(e-1)	Lobbyist, food and beverage: Threshold at or below which it is considered a gift and reported as such	\$50	\$110
305.0063	Lobbyist, annual filer: Expenditure threshold at or below which filer may file annually	\$1,000	\$2,220 [\$2,150]

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Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold	less than \$5,000	less than <u>\$11,120</u> [\$10,760]
572.022(a)(2)	PFS threshold	\$5,000 to less than \$10,000	<u>\$11,120</u> [\$10,760] to less than <u>\$22,240</u> [\$21,520]
572.022(a)(3)	PFS threshold	\$10,000 to less than \$25,000	<u>\$22,240</u> [\$21,520] to less than <u>\$55,610</u> [\$53,810]
572.022(a)(4)	PFS threshold	\$25,000 or more	<u>\$55,610</u> [\$53,810] or more
572.005, 572.023(b)(1)	PFS, retainer: Threshold over which filer with a substantial interest in a business entity must report more information	\$25,000	<u>\$55,610</u> [\$53,810]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: Threshold over which information must be reported	\$500	<u>\$1,110</u> [\$1,080]
572.023(b)(5)	PFS, loans: Threshold over which information must be reported	\$1,000	<u>\$2,220</u> [\$2,150]
572.023(b)(7)	PFS, gifts: Threshold over which information must be reported	\$250	<u>\$560</u> [\$540]
572.023(b)(8)	PFS, income from trust: Threshold over which information must be reported	\$500	<u>\$1,110</u> [\$1,080]
572.023(b)(15)	PFS, government contracts: Threshold of aggregate over which more information must be reported	Exceeds \$10,000	Exceeds <u>\$12,210</u> [\$11,810]
572.023(b)(15)(A)	PFS, government contracts: Itemization threshold	\$2,500 or more	<u>\$3,050</u> [\$2,950] or more
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold	less than \$5,000	less than <u>\$6,100</u> [\$5,910]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,100</u> [\$5,910] but less than <u>\$12,210</u> [\$11,810]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,210</u> [\$11,810] but less than <u>\$30,520</u> [\$29,530]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold	\$25,000 or more	<u>\$30,520</u> [\$29,530] or more
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold	less than \$5,000	less than <u>\$6,100</u> [\$5,910]

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,100</u> [\$5,910] but less than <u>\$12,210</u> [\$11,810]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,210</u> [\$11,810] but less than <u>\$30,520</u> [\$29,530]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold	\$25,000 or more	<u>\$30,520</u> [\$29,530] or more

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Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Current Threshold Amount	Adjusted Amount
302.014(4)	Speaker: Expenditures over which more information must be reported	\$10	\$20
303.005(a)(1) – (10)	Governor for a Day/Speaker's Day: Threshold over which more information must be reported	\$50	\$110

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Thresholds set by Title 1, Part 2, Tex. Admin. Code	Threshold Type	Original [Current] Threshold Amount	Adjusted Amount
20.62(a)	Staff Reimbursement	\$5,000	\$7,300 [\$7,060]
20.220	Comptroller: Additional disclosure	\$500	\$720 [\$710]

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4 (b) The changes made by this rule apply only to conduct occurring on or after the effective date
5 of this rule.

6 (c) The effective date of this rule is January 1, 2025~~[4]~~.

7 (d) In this section:

8 (1) "CEC" means county executive committee;

9 (2) "DCE" means direct campaign expenditure-only filer;

- 1 (3) "GPAC" means general-purpose political committee;
- 2 (4) "MPAC" means monthly-filing general-purpose political committee;
- 3 (5) "PAC" means political committee;
- 4 (6) "PFS" means personal financial statement;
- 5 (7) "SPAC" means specific-purpose political committee; and
- 6 (8) "TA" means treasurer appointment.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. ____

[Date]

ISSUE

Whether a Texas Limited Liability Company that is a wholly-owned subsidiary of a Master Limited Partnership that is traded on the New York Stock Exchange is prohibited by Chapter 253 of the Election Code from making certain political contributions. (AOR-693).

SUMMARY

A Texas Limited Liability Company that is owned by a partnership whose shares are publicly-traded on an exchange is subject to the Chapter 253 corporate contribution prohibition if any share of the partnership is owned by a corporation.

FACTS

The requestor is a Texas Limited Liability Company formed under the Texas Limited Liability Company Act and is managed by its sole member, which is another LLC (Parent 1).

Parent 1 is an LLC formed under a different state's laws and is managed by its sole member, another LLC (Parent 2).

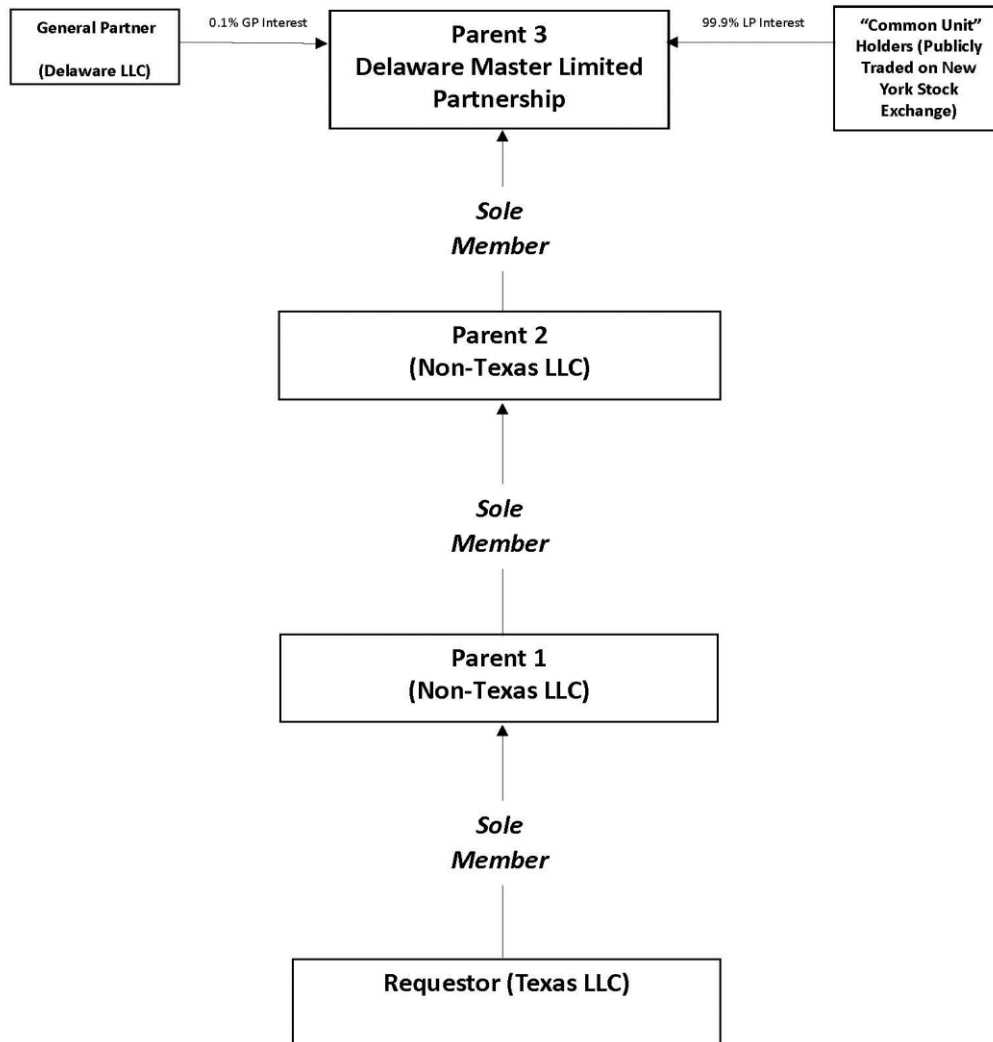
Parent 2 is an LLC formed under a different state's laws and is managed by its sole member, another LLC (Parent 3).

Parent 3 is a Delaware Master Limited Partnership. Parent 3 was formed under the Delaware Revised Uniform Partnership Act and is managed by its different LLC that serves as its general partner (General Partner). The chain of ownership is illustrated below.

Parent 3 is a master limited partnership. A "master limited partnership is a limited partnership whose interests, called 'common units,' are publicly traded." *Williams v. Pipe Pros, LLC*, No. 6:20-CV-00057, 2021 U.S. Dist. LEXIS 46406, at *3 n.2 (S.D. Tex. 2021) (internal citation omitted). "Master limited partnerships are similar to traditional limited partnerships in that they have limited partners, known as 'unitholders,' who provide capital, and a general partner who manages the partnership's affairs. Such partnerships differ, however, from traditional limited partnerships in that master limited partnerships are publicly traded." *Id.*

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION.

The requestor states the board of directors of the General Partner has ultimate management authority over the General Partner, and the entire chain of entities, including the requestor. All of the General Partner's board members are individuals.



ANALYSIS

The Texas Election Code generally prohibits corporations from making political contributions or expenditures. Tex. Elec. Code § 253.094. The corporate contribution restriction does not apply to all business forms. Instead it “applies only to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation.” *Id.* § 253.091. The prohibition also applies to the following associations, whether incorporated or not, including: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or inter insurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies. *Id.* § 253.093.

The question often arises, as it does here, whether a business association that is not organized as a corporation is nevertheless subject to the corporate contribution restriction if it has corporate ownership.

In Advisory Opinion No. 215 the TEC held that a “partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations.” Tex. Ethics Comm’n Op. No. 215 (1994), affirmed by Tex. Ethics Comm’n Op. No. 221 (1994). The TEC reasoned that “if a joint venture owned in part by a corporation made political contributions, corporate funds would be used to finance political activity.” *Id.*

In EAO 221, the TEC was asked to reconsider EAO 215 under the following facts:

- (a) the corporate partners play no decision making role in, or exercise any control over . . . political contributions/expenditures;
- (b) the non-corporate agent or employee of the partnership exercising control over such political contributions/expenditures is not an officer, employee or agent of any of the corporate partners;
- (c) contributions/expenditures are made only from partnership profits and not from contributions from corporate partners;
- (d) there are valid business reasons for the use of the partnership entity by the corporate partners and such use is not merely a subterfuge for circumvention of section 253.094 of the Election Code; and
- (e) the partnership is not an association described in Section 253.093 of the Texas Election Code.

Tex. Ethics Comm’n Op. No. 221 (1994). The TEC found that “[n]one of the factors listed above would permit a partnership with corporate partners to make political contributions or expenditures.” *Id.* The TEC similarly held that a limited liability company is subject to the corporate contribution restriction if it “is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D.” Tex. Ethics Comm’n Op. No. 383 (1997).

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION.

The requestor is wholly owned by a master limited partnership that is organized as a Delaware limited partnership under the Delaware Revised Uniform Partnership Act. The Master Limited Partnership (“MLP”) is traded daily on the New York Stock Exchange. Anyone—including corporations—may buy or sell units of the MLP. Ownership interest in the MLP changes daily.

Following the TEC’s past decisions, any amount of corporate ownership of an LLC will subject the LLC to the corporate contribution restriction. Applying that precedent to this request compels the conclusion that state law prohibits the requestor from making political contributions if any share of the MLP is owned by a corporation.

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether an officer or employee of a political subdivision who leases a residence to an employee may allow the employee to place a sign endorsing a candidate or a measure in the yard of the leased residence. (AOR-706)

SUMMARY

Under the facts presented in this opinion, an officer or employee of a political subdivision does not violate Section 255.003(a) by allowing an employee-tenant to place political advertising outside of a residence owned by the political subdivision.

FACTS

The requestor represents an Independent School District (“ISD”). The ISD owns multiple residences to facilitate employees living in district. In keeping with the purpose of the residences, the ISD prefers to rent to employees. When there are not enough employees who desire to live in ISD-owned residence, the ISD will occasionally either: 1) permit a former employee to continue leasing District-owned property, or 2) permit a member of the public to lease the property. The ISD is presently renting a residence to one non-employee. The ISD charges the same rental rate regardless of the resident’s employment status.

At issue here is an ISD-owned single-family residence that is leased to one of its employees. The employee-tenant wishes to place political advertising signs in the yard of the ISD-owned property. The request asks the TEC to assume the following facts regarding the lease arrangement:

1. The ISD withholds the rent for the property from the employee’s paycheck each month.
2. The ISD charges the market rental rate it charges to non-employees.
3. The property leased by the employee of the ISD is a single-family residence in which the employee resides.
4. The ISD’s lease agreement with the employee is silent as to the placement of signs on the leased property.
5. The ISD does not direct, encourage, or otherwise condone the placement of the political advertising.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

ANALYSIS

We start by noting that requestors for this opinion are the trustees of an ISD. A requestor may seek an advisory opinion about how the law applies to the requestor regarding an actual or hypothetical set of facts. Tex. Gov't Code § 571.091. The TEC does not issue opinions for requestors asking whether a third-party's conduct violates the law. *Id.*; 1 Tex. Admin. Code § 8.5. The requestor is not the employee leasing the ISD-owned property. Therefore, this opinion is limited to whether an ISD official would violate the law by allowing the employee to place political advertising at his or her ISD-owned residence.

“An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.” Tex. Elec. Code § 255.003(a).

For purposes of section 255.003(a) of the Election Code, the spending of public funds includes the use of a political subdivision's resources, including money, employees' work time, facilities, and equipment. *See* Ethics Advisory Opinion Nos. 550 (2019) (officer of a political subdivision may not use employees' work time or restricted areas of the political subdivision's facilities for political advertising), 443 (2002) (school district employees may not use work time to distribute a candidate's campaign flyers to a restricted area of the school that is not accessible to the public), 45 (1992) (school district officer or employee may not use the district's internal mail system equipment to distribute political advertising).

But not all uses of a political subdivision property to display political advertising constitute a violation of Section 255.003(a). In EAO 552, the TEC held that a city employee does not violate Section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum when certain conditions are met. Relevant to the holding in EAO 552 were the facts that the city-owned facility was rented to and paid for by the sponsor of the candidate debate or forum and the sponsor used non-public funds to pay the city its standard rental rate. The TEC further held that a city employee does not violate Section 255.003(a) by taking no action to prevent the display or distribution of the political advertising in a room rented by a member of the public or in corridors outside the city-owned room rented to and paid for by the sponsor of a candidate debate. *Id.*

Similar to the public space rented in EAO 552, the ISD makes residences available to employees and non-employees alike on the same terms (although it gives preference to ISD employees), the residences are leased at market rates from non-public funds, and the employee-tenant enjoys all the rights that a non-employee would during the duration of the lease. The facts presented by the requestor indicate also that the ISD has no formal or informal policy directing or controlling the display of any messages outside the ISD-owned residences. For these reasons, the ISD-owned residences function as an individual's private property. As such, under the facts presented in this opinion, an ISD official does not violate Section 255.003(a) by allowing a resident-employee to place political advertising outside of a residence owned by the ISD.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a PFS filer who owns a law firm that holds settlement funds on behalf of a client must report the settlement funds on the filer's personal financial statement filed under Chapter 572 of the Government Code. (AOR-708)

SUMMARY

Settlement funds held by law firm in trust for client are not the property of the law firm and do not have to be disclosed on a PFS.

FACTS

The requestor is a judge who owned a law firm before taking office. Before taking the bench, the requestor secured a monetary settlement for a client. The requestor remitted payment by check to the client. However, the client notified the requestor that he or she did not want the money and would not cash or deposit the check. The requestor states the law firm has ceased operations and no longer maintains any assets or has liabilities. The only remnant of the requestor's law firm is the client's settlement funds that remain in the firm's Interest on Lawyers Trust Accounts (IOLTA) account. The remaining funds are exclusively the property of a client, and no portion of the remaining funds are subject to any fees or claims for future or past service by the requestor or the requestor's firm.

A lawyer is required to keep client funds in a separate account. Tex. Disciplinary Rules of Professional Conduct Rule 1.14. An IOLTA account is a type of client trust account to hold client funds that is authorized by the state bar when "the beneficiary's funds are nominal or only expected to be held for a short period of time." *A Lawyer's Guide to Client Trust Accounts*, State Bar of Texas, January 2024 at 7 (citing Tex. State Bar R. art. XI, § 5; Rules Governing the Operation of the Texas Access to Justice Foundation, § 4). The IOLTA account bears the tax identification number of the Texas Access to Justice Foundation to whom interest earned on the account accrues.

The requestor states the firm has no lawful authority to dispose of the funds other than to safeguard them until paid to the client (or ultimately surrendered to the Comptroller as unclaimed property).

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

The requestor asks whether she must disclose the client funds held in trust by her former firm on her personal financial statement as either occupational income, or an asset or liability of her law firm.

ANALYSIS

A state officer must file a Personal Financial Statement (“PFS”) that includes “an account of the financial activity” for the preceding calendar year of the filer, and the filer’s spouse and dependent children if the filer had actual control over that activity. Tex. Gov’t Code § 572.023(a). The requirements to disclose occupational income, retainers, and assets and liabilities of certain businesses owned by the filer, are all potentially implicated by this request. *Id.* § 572.023(b)(1), (9).

Settlement funds held in trust for a client are not required to be reported as occupational income or a retainer.

A PFS filer must disclose all sources of occupational income and certain retainers, identified by employer, or if self-employed, by the nature of the occupation. *Id.* § 572.023(b)(1).

Occupational income is “income derived from *current* occupational activity.” Tex. Ethics Comm’n Op. No. 392 (1998). The settlement funds belong to the client and are distinct from money owed to the requestor as a fee for service. Unlike a fee earned for service, merely holding funds in a trust for a client is not occupational income and would not trigger reporting as such. Similarly, settlement funds held in trust for a client cannot be considered a retainer (i.e., a payment for future services) because the attorney has no right to the settlement funds.

Settlement funds held in trust for a client are not required to be reported as an asset or liability of a business.

A PFS filer must identify by “by description and the category of the amount of all assets and liabilities” of a business entity that the filer held a 50 percent or more interest during the reporting year. Here, the settlement funds held in trust for a client are not an asset or liability of the law firm, and therefore the requestor is not required to disclose the funds on her PFS.

Settlement funds held in trust for a client by a law firm are not the property of the law firm. Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct requires an attorney to “hold funds and other property belonging in whole or in part to clients or third persons” in a separate account. “The policy behind Rule 1.14 is to safeguard funds that *do not belong to the lawyer.*” *A Lawyer’s Guide to Client Trust Accounts*, State Bar of Texas, January 2024 at 3 (emphasis added).

Since client settlement funds held by a law firm do not belong to the law firm and can only be paid to the client (until surrendered to the Comptroller as unclaimed property), they are not “assets” of the firm for the purposes of Chapter 572. Therefore, a PFS filer is not required to report a client’s settlement funds as an asset of the business.

Similarly, client settlement funds in the custody of a law firm are not liabilities of the firm for purposes of Chapter 572. The term “liability” is not defined by Chapter 572 of the Government

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

Code. However, the term is generally used to describe a legal obligation to pay a third party. Black's Law Dictionary, Free 2nd Edition ("The state of being bound or obliged in law or justice to do, pay, or make good something; legal responsibility.").

The firm does have an obligation to remit the settlement funds to the client (and has already attempted to do so). However, rather than a traditional business liability, the requestor is holding the client's settlement funds as a fiduciary for the client. The funds are kept in a separate account from all operational accounts of the firm or personal accounts of the requestor. The account bears the tax identification number of a third-party nonprofit that benefits from the income earned on the account. Because the settlement funds are being held on behalf of the client by the firm, they do not need to be reported as a liability of the law firm under Chapter 572 of the Government Code.

DRAFT