

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: 9:00 a.m., Tuesday, September 24, 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 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, 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, 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.
 - iii. Cause No. D-1-GN-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court, Travis County, Texas; and

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

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 Court, Travis County, Texas.
- vii. Cause No. 22-CV-1130, *Matt Wiggins v. Texas Ethics Commission*, in the 122nd Judicial District Court, 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 Court, 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.
- x. Cause No. 2024-DCL-03953, *Ruben Cortez, Jr. v. Texas Ethics Commission*, in the 404th Judicial District Court, Cameron County, Texas.
- xi. Cause Nos. PD-0522-21, PD-0523-21, PD-0524-21, & PD-0525-21, *Ex Parte Robbie Gail Charette*.

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

C. Discussion to seek legal advice regarding Chapter 104 of the Texas Civil Practices and Remedies Code and possible action regarding the purchase of directors' and officers' liability insurance.

D. Discussion to seek legal advice and about anticipated litigation regarding 1 Tex. Admin Code § 20.1(17) and Tex. Elec. Code § 251.001(12).

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

- E. Discussion and possible action related to personnel matters including the salary of the executive director and general counsel and the TEC's full-time equivalent cap.
 - F. 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.

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 – June 18, 2024; and
 - Public Agenda – June 18, 2024.

RULEMAKING

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. The TEC may also discuss and take action, including publishing of rules in the Texas Register, related the TEC referral of matters to the appropriate prosecuting attorney for criminal prosecution.
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 re-publication in the Texas Register of amendments to section 18.31 of Title 1 of the Texas Administrative Code, regarding adjustments to reporting thresholds.

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

7. Discussion and possible action on the proposal and publication in the Texas Register of comprehensive amendments and reorganization of Chapter 40 of Title 1 of the Texas Administrative Code, regarding Financial Disclosure for Public Officers.
8. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to Section 50.1 of Chapter 50 of Title 1 of the Texas Administrative Code, regarding the Legislative Per Diem.

ADVISORY OPINIONS

9. Draft Advisory Opinion No. AOR-709: Whether a member of the legislator may accept office space contributed by a Limited Liability Company (LLC). Whether a member of the legislator may continue to use contributed office space for a district office through the moratorium on political contributions prescribed by Section 253.034 of the Election Code.

This opinion construes Section 254.031 of the Election Code.

10. Draft Advisory Opinion No. AOR-710: What activities may be conducted in a “generic get-out-the-vote” campaign as authorized by Section 253.171 of the Election Code? Must all campaign material list the name and office sought or held or a photograph of each judicial candidate?

This opinion construes Section 253.171 of the Election Code.

11. Draft Advisory Opinion No. AOR-711: Whether a lobbyist reports a publicly traded partnership as a corporation or non-corporate entity on the lobby registration form.

This opinion construes Chapter 305.005 of the Government Code.

12. Draft Advisory Opinion No. AOR-712: Would a statewide political party be able to use funds from corporations or labor organizations to pay a contractor’s invoice when the contractor was hired to develop administrative tools and a hiring plan?

This opinion construes Section 257.002 of the Election Code.

13. Draft Advisory Opinion No. AOR-714: Whether a judicial candidate needs to include on political advertising a disclosure regarding the candidate’s acceptance or rejection of voluntary expenditure limits considering the voluntary expenditure limits have been repealed.

This opinion construes Subchapter F of Chapter 253 of the Election Code.

14. Draft Advisory Opinion No. AOR-715: Whether Section 572.054(b) of the Government Code prohibits a former employee of a regulatory agency from receiving compensation for assisting clients applying for and managing grants issued by the requestor’s former state agency.

This opinion construes Section 572.054 of the Government Code.

**ADMINISTRATIVE WAIVER OF FINES, TREASURER TERMINATIONS
AND REPORTS MORE THAN 30 DAYS LATE**

15. 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: Waiver

- A. Dutton, Harold V. (00021133)
- B. Monette, Kathryn (00086409)

Staff Recommendation: Reduction

- C. De La Garza, Luis, Former Chair, Webb County Republican Party (00023811)
- D. Hartfield, William Harry (00086867)
- E. Lee, Christopher (00080897)
- F. Menon, Michelle, Campaign Treasurer, Fort Bend Employee Federation Committee on Public Education (00055453)
- G. Smoots-Thomas, Alexandra (00061839)
- H. Stryker, Cathleen M. (00066213)

Staff Recommendation: No Further Reduction or Waiver

- I. DeKoning, Diane, Campaign Treasurer, Texas Tea Party Republican Women (00031996)
- J. Limon, Elizabeth F., Campaign Treasurer, Bexar County Senatorial District 19 Tejano Democrats (00080666)
- K. Malik, Nasir H. (00087955)
- L. Rublein, Aaron, Campaign Treasurer, Houston LGBTQ+ Political Caucus PAC (00016168)
- M. Sawin, Kodi E. (00085348)
- N. Suh, Jinny (00085029)
- O. Wellborn, Victoria C. (00088489)
- P. Willett, Dorothy, Campaign Treasurer, Walker County Democratic Club (00055980)
- Q. Ximenes, Linda, Campaign Treasurer, Tap Pilam PAC (00085070)

Staff Recommendation: No Determination/Not Eligible for Appeal

- R. Allen, Lawrence A. (00056010)
- S. Matranga, Michael (00086238)
- T. Missick, Stephen A. (00086410)

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

U. Rocha, Marty M. (00088133)

16. Reports More Than 30 Days Late: Discussion and possible action regarding the imposition of an additional fine on the following filers:

Candidates/Officeholders

1. Clayton, Daniel Davis (00083822)
2. Davis, Brandon L. (00085850)
3. Latimer, Mackenzie A. (00086127)
4. Moon, Cary G. (00086296)
5. Morales, Nora Stephanie (00085592)
6. Ramirez, Frank A., IV (00085801)
7. Rector, Christopher D. (00085988)
8. Sanders, Tristian T.D. (00085324)
9. Wright-Reneau, Tracie L. (00086040)

Personal Financial Statements

10. Del Angel, Juan Carlos (00086675)
11. Glass, Kurt W. (00088364)
12. Gonzalez, Teresa Ramirez (00088424)
13. Guzman, Sylvia L. (00083237)
14. Mostyn, Benjamin M. (00087357)
15. Reza, Homer (00041006)
16. Saunders, David A. (00080329)

17. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive political committees and individuals:

Individuals

1. Cox, Amber (00086220)
2. DeFelice, Rebecca Moyer (00083902)
3. Longoria, Abel R. (00086262)
4. Monroe, Gerry (00086212)
5. Morris, Kevin A. (00086260)
6. Tolbert, Christopher L. (00087714)

Political Committees

7. A Better Grapevine, Kristen D. Johnson Ecklund, Treasurer (00068719)
8. Christians for a Better Bexar County, Yvette B. Martinez, Treasurer (00087431)
9. Greenpoint Urban Living Political Association & Resident's Rights Group GULP-ARRG, Nathan Gower Schwarz, Treasurer (00087590)
10. Haltom City Firefighters Committee for Responsible Government, Christopher V.

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

- Tyrone, Treasurer (00065031)
11. Judson Advancement for Children Committee, Oscar Saenz, Jr., Treasurer (00086988)
 12. NWISD Family First PAC, Nicole J. Donatelli, Treasurer (00087313)
 13. Sugar Land Professional Fire Fighters – PAC, Aaron R. Armijo, Treasurer (00085749)
 14. Texans for Justice, John B. Austin, Treasurer (00086906)
 15. Texas Pole PAC, Adrian Flores, Jr., Treasurer (00085310)
 16. Texas Professional Vacation Rental Coalition PAC, Chereen Fisher, Treasurer (00087651)
 17. Vote For Her, Coymelle K. Murchison, Treasurer (00082777)

OTHER MATTERS

18. Discussion and possible action regarding the TEC's biennial report including recommendations for statutory change, as required by Section 571.073 of the Government Code.
19. 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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Rev. 9-16-24

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:

The Texas Ethics Commission (the Commission) proposes the repeal of Texas Ethics Commission rules in Chapter 6.

Specifically, the Commission proposes the repeal of rules in Subchapter A of Chapter 6 (relating to General Rules), including §§6.5 regarding Authority to Adopt Rules, and 6.7 regarding Actions That Require Six Votes.

The Commission also proposes the repeal of rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §§6.31 regarding Quorum, and 6.33 regarding Frequency of Meetings.

This proposal, along with the contemporaneous proposal of amendments to certain other rules in Chapter 6, amends the rules used in the organization and administration of the Ethics Commission.

State law requires state agencies to “review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date.” Tex. Gov’t Code §2001.039. The law further requires agencies to “readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.” *Id.* .

TEC staff is continuing its comprehensive review with a review of the TEC’s rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the Ethics Commission’ organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the Commission’s rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning

the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Chapter 6. ORGANIZATION AND ADMINISTRATION

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

<rule>

Subchapter A. General Rules

1 TAC §§6.5 through 6.7, including §§6.5 regarding Authority to Adopt Rules, and 6.7 regarding Actions That Require Six Votes.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

<rule>

Subchapter B. Officers and Employees of the Commission.

1 TAC §§6.31 through 6.33, including §§6.31 regarding Quorum, and 6.33 regarding Frequency of Meetings.

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission Rules in Chapter 6.

Specifically, the Commission proposes amendments to rules in Subchapter A of Chapter 6 (relating to General Rules), including §§6.1 regarding Definitions, and 6.9 regarding Computation of Time.

The Commission also proposes amendments to rules in Subchapter B of Chapter 6 (relating to Officers and Employees of the Commission), including §§6.21 regarding Officers of the Commission, and 6.23 regarding Commission Staff.

The Commission also proposes amendments to rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §§6.35 regarding Called Meetings, 6.39 regarding Meeting Agenda, 6.43 regarding Speakers Addressing the Commission, 6.45 regarding Order and Conduct of Commission Meeting and 6.47 regarding Tape Recording of Meeting; Minutes.

This proposal, along with the contemporaneous proposal of the repeal of certain other rules in Chapter 6, amends the rules used in the organization and administration of the Ethics Commission.

State law requires state agencies to “review and consider for re adoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date.” Tex. Gov’t Code §2001.039. The law further requires agencies to “readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.” *Id.*

TEC staff is continuing its comprehensive review with a review of the TEC’s rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the Ethics Commission’ organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission’s rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Chapter 6. ORGANIZATION AND ADMINISTRATION

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code

<rule>

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

~~(78)~~ 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~~this title~~.

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

~~(94)~~ 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~~this title~~, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority).

~~(104)~~ Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).

~~(112)~~ Open Records Law--The Government Code, Chapter 552 (concerning Open Records).

~~(123)~~ Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

~~(134)~~ 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.

~~(15)~~ Presiding officer--The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).

~~(146)~~ Report--Any document or other information required to be filed under this title.

~~(157)~~ Staff--Employees of the commission, hired by the commission or the executive director.

~~(168)~~ Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and Campaigns).

~~(19)~~ First responder--An individual who is:

~~(A) a peace officer whose duties include responding rapidly to an emergency;~~

~~(B) fire protection personnel, as that term is defined by Section 419.021, Government Code;~~

~~(C) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;~~

~~(D) an ambulance driver; or~~

~~(E) an individual certified as emergency medical services personnel by the Department of State Health Services.~~

~~(20)~~ Judicial office--The office of:

~~(A) chief justice or justice, supreme court;~~

~~(B) presiding judge or judge, court of criminal appeals;~~

~~(C) chief justice or justice, court of appeals;~~

~~(D) district judge;~~

~~(E) judge, statutory county court; or~~

~~(F) judge, statutory probate court.~~

~~(21) Non-judicial office—An elective public office and the secretary of state, but not including an office described by paragraph (20) of this section.~~

§6.9. Computation of Time.

(a) This section states how to compute a period of time prescribed or allowed by this Part~~title~~, by any order of the agency, or by any applicable statute. The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would not be a business day as defined by Section 552.0031 of the Texas Government Code~~Saturday, a Sunday, or a legal holiday~~, the period is extended until the next day that is not a business day~~Saturday, a Sunday, or a legal holiday~~. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency is closed for a holiday established by state law.

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

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

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

*n

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter B. Officers and Employees of the Commission

§6.21. Officers of the Commission.

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

~~(ab) The commission's Commission chair and vice chair shall be officers~~ are elected annually by majority vote of the commission. The election shall take place at the first commission meeting held after June 1 of each year. Each officer shall serve until his or her successor is selected.

~~(be) The chairpresiding officer and vice chairthe vice presiding officer shall be members of~~ elected from different political partiessy caucus lists.

~~(cd) The chair and vice chairpresiding officer may be re-elected; however, if a new chairpresiding officer is elected he or sheit should be a member of~~from a different political party caucus list than the former chairpresiding officer.

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

~~(ef) In addition to other powers identified elsewhere in this Part, tThe presiding officer may perform the following actions of the commission:~~

(1) Sign previously approved subpoenas and orders;

(2) Schedule hearings and meetings;

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

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

~~(fg) The chairpresiding officer may appoint a commissioner as presiding officerchair pro tem to preside over a hearing held by the commission.~~

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

§6.23. Commission Staff.

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

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

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

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

*n

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter C. Commission Meetings

§6.35. Called Meetings.

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

§6.39. Meeting Agenda.

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

(b) The presiding officer, a commission member with the consent of the presiding officer, or any two commissioners may direct the executive director to include an item on the agenda if it

complies with the posting requirements specified by law. The presiding officer may direct the executive director to remove an item included on a proposed agenda unless that item is requested by two commission members other than the presiding officer.

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

§6.43. Speakers Addressing the Commission.

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

- (1) the speaker's name;
- (2) the person or entity the speaker represents, if any;
- (3) the agenda item the speaker wishes to address; and
- (4) his or her mailing address and telephone number.

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

§6.45. Order and Conduct of Commission Meeting.

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

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

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

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

§6.47. ~~Tape~~-Recording of Meeting; Minutes.

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

(b) The presiding officer shall announce the names of each commissioner who makes or seconds a motion to be voted upon by the commission. After the vote has been taken, the presiding

officer shall announce the vote in a manner that identifies how each commissioner voted, if a commissioner abstained, or if a commissioner was not present for the vote.

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

The Texas Ethics Commission (the Commission) proposes the repeal of all existing rules in Texas Ethics Commission Chapter 12.

Specifically, the Commission proposes the repeal of all rules in Subchapter A of Chapter 12 (relating to General Provision and Procedures), including §§12.5, regarding Deadline for Filing a Complaint, 12.6 regarding File Date for Purposes of Commission Response Deadline, 12.7 regarding Confidentiality, 12.9 regarding Compliance with Open Meetings Law and Open Records Law, 12.11 regarding Delegation to Executive Director, 12.13 regarding Representation by Counsel, 12.15 regarding Appearance of Complainant at Hearing, 12.19 regarding Agreements by Be in Writing, 12.21 regarding Notice, 12.23 regarding Hearing in Respondent's Absence, 12.25 regarding Waiver of Hearing, 12.27 regarding Deadline Extension, 12.28 regarding Production of Documents during Preliminary Review, 12.29 regarding Subpoenas Issued by Commission, 12.30 regarding Subpoenas Issued by Counsel for the Respondent, 12.31 regarding Conduct and Decorum, 12.33 regarding Sanctioning Authority, 12.34 regarding Agreed Orders, 12.35 regarding frivolous Complaint and 12.36 regarding Assessment of Civil Penalty.

The Commission also proposes the repeal of all rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of a Complaint), including §§12.51 regarding Non-Complying Complaint, 12.52 regarding Response to Notice of Complaint, 12.53 regarding Commission Initiated Complaint, 12.59 regarding Description of Violation, 12.61 regarding Statement of Facts and 12.67 regarding Copies and Documents Provided by the Commission.

The Commission also proposes the repeal of all rules in Subchapter C of Chapter 12 (relating to Investigation and Preliminary Review), including §§12.81 regarding Technical, Clerical or De Minimis Violations and 12.83 regarding Preliminary Review.

The Commission also proposes the repeal of all rules in Subchapter D of Chapter 12 (relating to Preliminary Review Hearing), including §§12.84 regarding Notice of Preliminary Review Hearing, 12.85 regarding Preliminary Review Hearing, 12.86 regarding Motions for Continuance and 12.87 regarding Resolution of Preliminary Review Hearing.

The Commission also proposes the repeal of all rules in Division 1 of Subchapter E of Chapter 12 (relating to Formal Hearing: General Procedures), including §§12.101 regarding Application and Construction, 12.102 regarding Order of Formal Hearing, 12.103 regarding Notice of Formal Hearing, 12.117 regarding Formal Hearing: Venue and 12.119 regarding resolution after a Formal Hearing.

The Commission also proposes the repeal of all rules in Division 2 of Subchapter E of Chapter 12 (relating to Formal Hearing: Scheduling, Filing, and Service), including §§12.121 regarding Prehearing Conferences, 12.123 regarding Scheduling Orders, 12.125 regarding Filing of Documents, and 12.127 regarding Service of Documents.

The Commission also proposes the repeal of all rules in Division 3 of Subchapter E of Chapter 12 (relating to Formal Hearing: Powers and Duties of Commission and Presiding Officer), including §§12.131 regarding Powers and Duties of the Presiding Officer, and 12.133 regarding Orders From the Commission.

The Commission also proposes the repeal of all rules in Division 5 of Subchapter E of Chapter 12 (relating to Formal Hearing: Pleadings and Motions), including §§12.151 regarding Required Form of Pleadings, 12.153 regarding Motions, Generally, and 12.155 regarding Motions for Continuance and to Extend Time.

The Commission also proposes the repeal of all rules in Division 6 of Subchapter E of Chapter 12 (relating to Formal Hearing: Hearings and Prehearing Conferences), including §§12.161 regarding Time Allotted to Parties, 12.163 regarding Presentation of Evidence, 12.165 regarding Rules of Evidence, and 12.167 regarding Numbering of Exhibits.

The Commission also proposes the repeal of all rules in Division 7 of Subchapter E of Chapter 12 (relating to Formal Hearing: Disposition of Formal Hearing), including §§12.171 regarding Standard of Proof, 12.173 regarding Default Proceedings, 12.174 regarding Summary Disposition, and 12.175 regarding Resolution of Formal Hearing.

This proposal, along with the contemporaneous proposal of new Subchapters and Divisions in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to “review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date.” Tex. Gov’t Code §2001.039. The law further requires agencies to “readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.” *Id.*

TEC staff started its comprehensive review with the TEC’s rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the Commission’s rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Chapter 12. SWORN COMPLAINTS

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter A. General Provisions and Procedures

1 TAC §§12.5 through 12.36, including §§12.5, regarding Deadline for Filing a Complaint, 12.6 regarding File Date for Purposes of Commission Response Deadline, 12.7 regarding Confidentiality, 12.9 regarding Compliance with Open Meetings Law and Open Records Law, 12.11 regarding Delegation to Executive Director, 12.13 regarding Representation by Counsel, 12.15 regarding Appearance of Complainant at Hearing, 12.19 regarding Agreements by Be in Writing, 12.21 regarding Notice, 12.23 regarding Hearing in Respondent's Absence, 12.25 regarding Waiver of Hearing, 12.27 regarding Deadline Extension, 12.28 regarding Production of Documents during Preliminary Review, 12.29 regarding Subpoenas Issued by Commission, 12.30 regarding Subpoenas Issued by Counsel for the Respondent, 12.31 regarding Conduct and Decorum, 12.33 regarding Sanctioning Authority, 12.34 regarding Agreed Orders, 12.35 regarding frivolous Complaint and 12.36 regarding Assessment of Civil Penalty.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter B. Filing and Initial Processing of a Complaint.

1 TAC §§12.51 through 12.67, including §§12.51 regarding Non-Complying Complaint, 12.52 regarding Response to Notice of Complaint, 12.53 regarding Commission Initiated Complaint, 12.59 regarding Description of Violation, 12.61 regarding Statement of Facts and 12.67 regarding Copies and Documents Provided by the Commission.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter C. Investigation and Preliminary Review.

1 TAC §§12.81 through 12.83, including §§12.81 regarding Technical, Clerical or De Minimis Violations and 12.83 regarding Preliminary Review.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter D. Preliminary Review Hearing.

1 TAC §§12.84 through 12.87, including §§12.84 regarding Notice of Preliminary Review Hearing, 12.85 regarding Preliminary Review hearing, 12.86 regarding Motions for Continuance and 12.87 regarding Resolution of Preliminary Review Hearing.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 1. General Procedures.

1 TAC §§12.102 through 12.119, including §§12.101 regarding Application and Construction, 12.102 regarding Order of Formal Hearing, 12.103 regarding Notice of Formal Hearing, 12.117 regarding Formal Hearing: Venue and 12.119 regarding resolution after a Formal Hearing.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 2. Scheduling, Filing, and Service.

1 TAC §§12.121 through 12.127, including §§12.121 regarding Prehearing Conferences, 12.123 regarding Scheduling Orders, 12.125 regarding Filing of Documents, and 12.127 regarding Service of Documents.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 3. Powers and Duties of Commission and Presiding Officer.

1 TAC §§12.131 through 12.133, including §§12.131 regarding Powers and Duties of the Presiding Officer, and 12.133 regarding Orders From the Commission

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 5. Formal Hearing: Pleadings and Motions.

1 TAC §§12.151 through 12.155, including §§12.151 regarding Required Form of Pleadings, 12.153 regarding Motions, Generally, and 12.155 regarding Motions for Continuance and to Extend Time.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 6. Hearings and Prehearing Conferences.

1 TAC §§12.161 through 12.167, including §§12.161 regarding Time Allotted to Parties, 12.163 regarding Presentation of Evidence, 12.165 regarding Rules of Evidence, and 12.167 regarding Numbering of Exhibits.

*n

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter E. Formal Hearing. Division 7. Disposition of Formal Hearing.

1 TAC §§12.171 through 12.175, including §§12.171 regarding Standard of Proof, 12.173 regarding Default Proceedings, 12.174 regarding Summary Disposition, and 12.175 regarding Resolution of Formal Hearing.

The Texas Ethics Commission (the TEC) proposes new Chapter 12 in TEC Rules, regarding Sworn Complaints.

Specifically, the TEC proposes new rules in Subchapter A of Chapter 12 (relating to Respondent's Rights), including §§12.01 regarding Notice, 12.02 regarding Representation by Counsel, 12.03 regarding *Ex Parte* Communications and 12.04 regarding Agreements to be in Writing.

The TEC also proposes new rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of Complaint), including §§12.11 regarding Deadline for Filing a Complaint, 12.12 regarding File Date for a Complaint, 12.13 regarding Description of Violation, 12.14 regarding Statement of Facts and 12.15 regarding Commission Initiated Complaint.

The TEC also proposes new rules in Subchapter C of Chapter 12 (relating to Investigation and Discovery), including §§12.21 regarding Response to Notice of Complaint, 12.22 regarding Written Questions, 12.23 regarding Production of Documents During Preliminary Review, 12.24 regarding Proposed Settlement Before Preliminary Review Hearing, 12.25 regarding Subpoenas Issued by Commission, and 12.26 regarding Subpoenas Issued by Counsel for the Respondent.

The TEC also proposes new rules in Division 1 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: General Rules), including §§12.31 regarding Purpose and Effect of Motions, 12.32 regarding Required Form of Motions, 12.33 regarding Certificate of Conference, 12.34 regarding Motion Deadlines, 12.35 regarding Method of Filing, 12.36 regarding Service of Documents, 12.37 regarding Non-conforming Documents, 12.38 regarding Amended and Supplemental Filings, and 12.39 regarding Application of this Subchapter.

The TEC also proposes new rules in Division 2 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: Types of Motions), including §§12.41 regarding Motion to Extend Time, 12.42 regarding Motion for Continuance, 12.43 regarding Motion to Dismiss, 12.44 regarding Motion for Summary Disposition, and 12.45 regarding Motion for Sanctions.

The TEC also proposes new rules in Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §§12.51 regarding Conduct and Decorum, and 12.52 regarding Private Deliberations.

The TEC also proposes new rules in Division 2 of Subchapter E of Chapter 12 (relating to Hearings: Powers of the Presiding Officer), including §§12.61 regarding Selection and Delegation of Presiding Officer, 12.62 regarding Set Hearing, 12.63 regarding Consolidate or Sever Matters for Hearing, 12.64 regarding Conduct Hearings, 12.65 regarding Rule of Evidentiary Matters and 12.66 regarding Sign Orders and Subpoenas.

The TEC also proposes new rules in Division 3 of Subchapter E of Chapter 12 (relating to Hearings: Preliminary Review Hearings), including §§12.71 regarding Notice of Preliminary Review Hearing, and 12.72 regarding Preliminary Review Hearing.

The TEC also proposes new rules in Division 4 of Subchapter E of Chapter 12 (relating to Hearings: Formal Hearings), including §§12.81 regarding Order of Formal Hearing, 12.82 regarding Notice of Formal Hearing, 12.83 regarding Formal Hearing: Venue, 12.84 regarding

Presentation of Evidence, 12.85 regarding Rules of Evidence, and 12.86 regarding Number of Exhibits.

The TEC also proposes new rules in Subchapter F of Chapter 12 (relating to Resolutions), including §§12.91 regarding Agreed Resolutions, 12.92 regarding Resolution of Technical or De Minimis Allegations, 12.93 regarding Default Proceedings and 12.94 regarding Final Orders After Formal Hearings.

This proposal, along with the contemporaneous proposal of the repeal of all existing rules in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to “review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date.” Tex. Gov’t Code § 2001.039. The law further requires agencies to “readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.” *Id.*

The TEC started its comprehensive review with the TEC’s rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency and clarity in the TEC’s rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The General Counsel has determined that during the first five years that the proposed rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed rules may do so at any Commission meeting during the agenda item relating to the proposed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the TEC’s website at www.ethics.state.tx.us.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Chapter 12. SWORN COMPLAINTS

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter A. RESPONDENT'S RIGHTS

§12.01. Notice

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

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

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

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

§12.02. Representation by Counsel

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

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

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

compliance with those provisions, with the commission requesting to be admitted to represent a respondent.

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

§12.03. Ex Parte Communications

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

§12.04. Agreements to be in Writing

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

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

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

*n

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

§12.11. 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 not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.12. File Date for a Complaint

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

§12.13. Description of Violation

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

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

§12.14. Statement of Facts

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

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

§12.15. Commission Initiated Complaint

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

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

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

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

*n

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter C. INVESTIGATION AND DISCOVERY

§12.21. Response to Notice of Complaint

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

(1) be in writing;

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

(3) be signed by the respondent.

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

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

§12.22. Written Questions

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

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

§12.23. Production of Documents During Preliminary Review

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

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

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

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

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

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

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

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

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

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

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

§12.24. Proposed Settlement Before Preliminary Review Hearing

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

§12.25. Subpoenas Issued by Commission

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

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

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

§12.26. Subpoenas Issued by Counsel for the Respondent

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

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

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

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

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

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

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

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

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

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

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

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

(1) a preliminary review hearing; or

(2) a formal hearing.

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

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

(f) Service.

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

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

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

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

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

(g) Response.

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

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

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

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

opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

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

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

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

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The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter D. PLEADINGS AND MOTIONS

Division 1 – General Rules

§12.31. Purpose and Effect of Motions

To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for

the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the executive director, the presiding officer, or by vote of the commission, as applicable, even if the motion is uncontested or agreed.

§12.32. Required Form of Motions

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

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

§12.33. Certificate of Conference

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

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

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

§12.34. Motion Deadlines

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

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

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

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

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

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

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

§12.35. Method of Filing

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

(1) the sworn complaint number; and

(2) the title of the document.

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

§12.36. Service of Documents

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

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

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

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

(A) return the filing;

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

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

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

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

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

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

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

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

§12.37. Non-conforming Documents

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

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

(2) accept the filing.

§12.38. Amended and Supplemental Filings

A party may amend or supplement its pleadings as follows:

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

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

§12.39. Application of this Subchapter

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

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Subchapter D. PLEADINGS AND MOTIONS

Division 2 – Types of Motions

§12.41. Motion to Extend Time

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

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

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

(2) the specific reason for the request; and

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

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

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

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

§12.42. Motion for Continuance

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

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

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

(2) the specific reason for the request; and

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

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

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

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

(2) the date and time of the proceeding.

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

§12.43. Motion to Dismiss

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

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

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

§12.44. Motion for Summary Disposition

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

(b) Unless otherwise ordered by the presiding officer:

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

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

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

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

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

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

(d) Responses to motions.

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

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

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical

records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

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

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

(f) Proceedings on motions.

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

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

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

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

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

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

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

§12.45. Motion for Sanctions

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

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

(A) in bad faith;

(B) for the purpose of harassment; or

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

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

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

(4) violating §12.51 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

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Subchapter E. HEARINGS

Division 1 – General Rules

§12.51. Conduct and Decorum

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

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

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

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

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

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

(1) when addressing the commission; and

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

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

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

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

(1) issuing a warning;

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

(3) excluding persons from the proceeding;

(4) recessing the proceeding; and

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

§12.52. Private Deliberations

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

§12.53. Record of Rulings

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

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Subchapter E. HEARINGS

Division 2 - Powers of the Presiding Officer

§12.61. Selection and Delegation of Presiding Officer

(a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the presiding officer for all hearings.

(b) The chair may appoint another commissioner to preside over a hearing held by the commission.

§12.62. Set Hearings

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

§12.63. Consolidate or Sever Matters for Hearing

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

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

§12.64. Conduct Hearings

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

(1) administer oaths;

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

(3) require the prefiling of exhibits and testimony;

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

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

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

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

§12.65. Rule on Evidentiary Matters

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

§12.66. Sign Orders and Subpoenas

The presiding officer may sign previously approved subpoenas and orders.

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Subchapter E. HEARINGS

Division 3 – Preliminary Review Hearings

§12.71. Notice of Preliminary Review Hearing

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 30 days before the date of the hearing and must include:

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual matters asserted.

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

- (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and
- (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

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

§12.72. Preliminary Review Hearing

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

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

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Subchapter E. HEARINGS

Division 4 – Formal Hearings

§12.81. Order of Formal Hearing

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

§12.82. Notice of Formal Hearing

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

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual matters asserted.

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

- (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and
- (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

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

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

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

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

§12.83. Formal Hearing: Venue

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

§12.84. Presentation of Evidence

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

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

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

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

§12.85. Rules of Evidence

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

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

§12.86. Numbering of Exhibits

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

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

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

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

*n

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

<rule>

Subchapter F. RESOLUTIONS

§12.91. Agreed Resolutions

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

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

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

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

(2) may include a civil penalty.

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

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

§12.92. Resolution of Technical or De Minimis Allegations

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

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

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

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

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

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

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

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

§12.93. Default Proceedings

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

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

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

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

(3) the notice of hearing was:

(A) received by the defaulting party; or

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

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

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

§12.94. Final Orders after Formal Hearings

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

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

1 **AGENDA 2, ITEMS 4 THROUGH 8, EXHIBIT F**

2 **Text of Proposed Amendments**

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

5 **Chapter 18. GENERAL RULES CONCERNING REPORTS**

6 **§18.31. Adjustments to Reporting Thresholds.**

7 (a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted
8 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

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	\$100	\$140
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

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	<u>\$333,660 to less than \$444,880</u> [\$322,840 to less than \$430,450]
305.005(g)(8)	Lobbyist: Compensation threshold	\$250,000	<u>\$444,880 to less than \$556,100</u> [\$430,450 to less than \$538,070]
305.005(g)(9)	Lobbyist: Compensation threshold	\$300,000	<u>\$556,100 to less than \$667,320</u> [\$538,070 to less than \$645,680]
305.005(g)(10)	Lobbyist: Compensation threshold	\$350,000	<u>\$667,320 to less than \$778,540</u> [\$645,680 to less than \$753,290]
305.005(g)(11)	Lobbyist: Compensation threshold	\$400,000	<u>\$778,540 to less than \$889,760</u> [\$753,290 to less than \$860,910]
305.005(g)(12)	Lobbyist: Compensation threshold	\$450,000	<u>\$889,760 to less than \$1,000,980</u> [\$860,910 to less than \$968,520]
305.005(g)(13)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,000,980 to less than \$1,112,200</u> [\$968,520 to less than \$1,076,130]
305.005(g-1)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,112,200 or more</u> [\$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	<u>\$2,220</u> [\$2,150]

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

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

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]

1 (b) The changes made by this rule apply only to conduct occurring on or after the effective date
2 of this rule.

3 (c) The effective date of this rule is January 1, 2025^[4].

4 (d) In this section:

5 (1) "CEC" means county executive committee;

6 (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.

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Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.
Deleted language is indicated by ~~strikethrough~~ text.

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

§40.1. Financial Statement.

(a) The Texas Ethics Commission adopts by reference the financial statement form prescribed by the commission on January 13, 1992. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

(b) The form adopted under subsection (a) of this section may be revised by the executive director under §18.1 of this title (relating to Adoption and Revision of Forms), and if so revised shall be deemed to have been adopted by the commission under this section.

§40.2. Disclosure of Financial Activity.

For purposes of §572.023 of the Government Code, a filer’s personal financial statement must include:

- (1) the filer’s financial activity in which the filer held an ownership interest, including but not limited to community property; and
- (2) the financial activity of the filer’s spouse and dependent children if the filer exercised ~~or held the right to exercise~~ any degree of ~~legal or~~ factual control over the activity, notwithstanding a partition agreement.

§40.3. PFS Required for Each Year of Service

(a) A state officer who serves for any portion of a calendar year must file a PFS the following year covering financial activity that occurred during the portion of the year the state officer held office.

(b) A member of the legislature who retires at the end of the member’s term in January is not required to file a PFS covering the last calendar year of service.

Comments: For example, under 40.3(a), if a state officer ceases to be a state officer in October 2024, the state officer is required to file a PFS by the deadline provided by 572.026(a) in calendar year 2025, covering financial activity that occurred through October 2024, provided the state officer does not holdover.

Under 40.3(b), a member of the legislature who retires at the end of the member’s term in January 2025 is required to file a PFS in 2025 covering calendar year 2024. The member is not required to file a PFS in calendar year 2026 covering calendar year 2025 by virtue of service from January 1 to January 6 of 2025, before the member’s successor is sworn into office.

1 **§40.5. Assets and Liabilities of Business Associations**

2 Assets and liabilities of business associations that must be reported under §572.023(b)(9) of the
3 Government Code shall be reported as though they are the assets and liabilities of the individual
4 filer.

5 **§40.9. Exchange Traded Funds and Real Estate Investment Trusts**

6 Ownership interests in exchange-traded funds and real estate investment trusts shall be reported
7 under §572.023(b)(2) of the Government Code as though they were shares of stock.

8 **§40.11. Publicly Traded Corporation as Source of Income ~~over \$500.~~**

9 For purposes of §572.023(b)(4), Government Code, a publicly traded corporation is identified as
10 a source of income by disclosing its full name in addition to the category of the amount of
11 income.

12 **§40.13. Beneficial interested in Real Property Includes Real Property Held in a Trust**

13 (a) Except as provided in subsection (b), a filer must disclose real property held in a trust for the
14 benefit of the filer as a beneficial interest in real property under §572.023(b)(6) of the
15 Government Code.

16 (b) A filer is not required to disclose real property held in a blind trust that complies with
17 §572.023(c) of the Government Code only if the filer does not have actual knowledge of the
18 property held in a trust for the filer's benefit.

19 **§40.15. Identification of the Source of Rents Derived from Rental Property**

20 An identification of the source of rents derived from a rental property must include the name of
21 the lessee and the address of the rental property.

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

Whether a member of the legislator may accept office space contributed by a Limited Liability Company (LLC).

Whether a member of the legislator may continue to use contributed office space for a district office through the moratorium on political contributions prescribed by Section 253.034 of the Election Code. (AOR-709)

SUMMARY

A member of the legislature may accept the use of office space contributed by the LLC, provided the LLC is not engaged in a business specified by Section 253.093 and not owned in whole or in part by a corporation.

As long as a person subject to Section 253.034 of the Election Code accepts and receives a political contribution in the form of office space before the beginning of the legislative moratorium, the person may continue to use the office space during the period covered by the moratorium.

FACTS

As a general matter a member of the legislature may accept a political contribution from an LLC. Tex. Ethics Comm'n Op. No. 383 (1997).

The definition of "political contribution" includes an "officeholder contribution." Tex. Elec. Code § 251.001(5). An officeholder contribution is "a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that: A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money." *Id.* § 251.001(4). We assume the donation of office space is an officeholder contribution.

A member of the legislature may accept the use of office space contributed by the LLC, provided the LLC is not engaged in a business specified by Section 253.093 of Election Code and not owned in whole or in part by a corporation. Tex. Ethics Comm'n Op. No. 383 (1997).

The requestor next asks whether the general prohibition on the acceptance of a political contribution during and following a regular legislative session would affect his ability to use the

contributed office space as a district office. During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment, a member of the legislature may not knowingly accept a political contribution and shall refuse a political contribution that is received during that time. Tex. Elec. Code § 253.034(b). The question then is whether the use of office space during the legislative moratorium constitutes an acceptance of an in-kind political contribution during the legislative moratorium.

We addressed this precise question in Ethics Opinion No. 239 (1994) and held that as long as a person subject to section 253.034 of the Election Code accepts and receives a political contribution in the form of office space before the beginning of the legislative moratorium, the person may continue to use the office space during the period covered by the moratorium. Tex. Ethics Comm'n Op. No. 239 (1994).

We see no reason to deviate from this long-held position.

DRAFT

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

What activities may be conducted in a “generic get-out-the-vote” campaign as authorized by Section 253.171 of the Election Code?

Must all campaign material list the name and office sought or held or a photograph of each judicial candidate? (AOR-710)

SUMMARY

Permissible activities during a “generic get-out-the-vote” campaign include certain voter registering activities, providing transportation to polling locations, and providing information about candidates that the party supported, as long as the services were provided equally to people who supported and opposed the requestor’s supported candidates.

FACTS

The requestor represents a county executive committee. He asks what activities may be conducted in a “generic get-out-the-vote” campaign, and whether all campaign material must list the name and office sought, office held, or photograph of each judicial candidate.

The requestor also provided sample material the committee intended to use. The material listed the name and office sought or held for several example judicial candidates.

ANALYSIS

Under Section 253.171 of the Election Code, the expenditures for a “generic get-out-the-vote” campaign are not considered contributions to judicial candidates who benefit from the campaign, provided that the get-out-the-vote campaign complies with specified conditions. Relevant to this opinion, the Election Code allows for the creation and distribution of candidate lists, with certain restrictions, without it counting as an-kind contribution to a judicial candidate benefited by the list. Tex. Elec. Code § 253.171(1).

The Election Code does not define the phrase “generic get-out-the-vote.” However, that term has a particular definition in federal law. The Code of Federal Regulations defines “generic” in the context of get-out-the-vote drives to mean “activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.” 11 C.F.R. § 106.6(b)(3).

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

The word “generic” appears only in Section 253.171 of Title 15 of the Election Code. Elsewhere in Title 15, get-out-the-vote activities are divided into “partisan” and “non-partisan.” *See* Tex. Elec. Code §§ 253.099, 253.100(d)(4). Again, there is a federal definition of nonpartisan get-out-the-vote activities. The Code of Federal Regulations states that a get-out-the-vote drive is nonpartisan if “it is conducted so that information and other assistance regarding registering or voting, including transportation and other services offered, is not withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.” 11 C.F.R. § 114.3(c)(4)(ii).

At the federal level, “generic” refers to the get-out-the-vote campaign, and the advice and information provided must be general, rather than related to a specific candidate. Also at a federal level, partisan and non-partisan activities apply to the people who are the subject of the get-out-the-vote campaign. The party may put out information containing express advocacy, but it must continue to register or provide transportation or information to people, no matter if the person is opposed to the politics of the party. *See* 11 C.F.R. § 114.3(c)(4).¹

Section 253.171 provides a way for political parties to distribute written lists of candidates as part of a get-out-the-vote campaign. If the list complies with the restrictions identified in Section 253.171, the political expenditures made to produce the list are not considered contributions to judicial candidates.

So, during a “generic get-out-the-vote” campaign, a party may register people to vote, provide transportation to polling locations, and provide information about candidates that the party supported, as long as the services are provided equally to people who support and oppose the party’s candidates. Additionally, the party may distribute a written list of two or more candidates, but the list is not a required part of a “generic get-out-the-vote” campaign.

Finally, in order to comply with 253.171, candidates must be identified by name and office sought, office held, or by photograph.² Because the material provided by the requestor lists the name and office sought or held, it complies with Section 253.171 of the Election Code.

¹ This opinion only construes Section 253.171 of the Election Code. A person must also comply with all other laws applicable to registering people to vote.

² The requestor should be aware that other restrictions regarding political advertising may come into play, such as the requirement prescribed by Section 255.006 of the Election Code to include the word “for” if the candidate is not the incumbent, and the requirement prescribed by Section 255.001 of the Election Code for political advertising to display a disclosure statement, but they will not be specifically addressed in this opinion.

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

Whether a lobbyist reports a publicly traded partnership as a corporation or non-corporate entity on the lobby registration form. (AOR-711)

SUMMARY

A publicly traded partnership is a partnership, not a corporation, and is therefore reported on the lobby registration as a non-corporate entity under Section 305.005(h) of the Government Code.

FACTS

The requestor is a Master Limited Partnership (MLP) that has employees who are required to register as lobbyists with the Texas Ethics Commission (TEC). The requestor-MLP is organized as a limited partnership with limited partner units publicly traded on the New York Stock Exchange.

ANALYSIS

A registration filed by a lobbyist must include a list of lobby clients. Tex. Gov't Code § 305.005(a). The registration generally separates lobby clients into two categories: 1) corporations and 2) non-corporations. *Id.* § 305.005(h), (i) (describing a non-corporation as “a group or organization, including a business, trade, or consumer interest association *but excluding a corporation.*”) (emphasis added). Corporations are further separated into publicly traded corporations and “corporations the shares of which are not publicly traded.” *Id.* § 305.005(i).

The amount and type of organizational information required to be disclosed about a lobby client depends on whether it is a non-corporation, non-publicly traded corporation, or publicly traded corporation.

The requestor asks how its lobbyists should report the MLP on the lobby registration form.

An MLP is a limited partnership that has ownership units publicly traded on an exchange. *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).

Like a typical limited partnership, an MPL has a general partner who manages the partnership's affairs and limited partners who provide capital. *Id.* The ownership interests are called "units" and publicly traded on an exchange. *Id.*

The requestor-MLP is organized as a Delaware limited partnership with its ownership units publicly traded on the New York Stock Exchange. The requestor's general partner is a Delaware limited liability company.

Chapter 305 draws a bright line between a corporation and non-corporate entity by listing other types of organizations and expressly excluding corporations from that list. Tex. Gov't Code § 305.005(h). For the purposes of lobby disclosure, whether ownership of a business entity is publicly traded only matters if the business is organized as a corporation. *Id.* § 305.005(i). Since an MLP is a partnership, not a corporation, it is reported on the lobby registration as a non-corporation under subsection 305.005(h).

This decision is not in tension with Ethics Advisory Opinion 606. Tex. Ethics Comm'n Op. No. 606 (2024). In EAO 606, the TEC held that an MLP would be subject to the prohibition on corporate political contributions if it had corporate ownership. However, the TEC *did not* hold that an MLP is a corporation. *Id.* Instead, the TEC held that an MLP could be subject to the corporate contribution prohibition if it had corporate ownership. *Id.* See also Texas Ethics Comm'n Op. No. 221 (1994) (applying the corporate contribution restriction to a partnership with a corporate partner to "restrict the transfer of corporate treasury funds into the political process").

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

Would a statewide political party be able to use funds from corporations or labor organizations to pay a contractor's invoice when the contractor was hired to develop administrative tools and a hiring plan? (AOR-712)

SUMMARY

The political party may use funds from corporations or labor organizations to pay a contractor's invoice because the contractor provided normal administrative services.

FACTS

The requestor represents a political party. The requestor would like to use funds from corporations or labor organizations to pay a contractor's invoice. Specifically, the requestor stated that the contractor would be "developing administrative tools (spreadsheets, budgets, etc.) and a hiring plan related to [the] party's coordinated campaign." The spreadsheets would be used to track budget and cash flow.

ANALYSIS

A political party that accepts a contribution authorized by Section 253.104 of the Election Code may use the contribution to defray normal overhead and administrative or operating costs incurred by the party. Tex. Elec. Code § 257.002(a)(1). The TEC has interpreted the phrase "normal overhead and administrative or operating costs" to include expenditures for office space, utilities, and other usual costs of operating an organization. *See* Tex. Ethics Comm'n Op. No. 176 (1993) (political party may use corporate donations to purchase a building for a permanent party headquarters) (affirmed by H.B. 2525, 81st Leg., R.S. (2009) (amending Tex. Elec. Code § 253.100(a), (c); adding Tex. Elec. Code § 253.100(d), (e))).

In Advisory Opinion No. 604, the TEC found the key distinction that made expenditures "normal overhead and administrative or operating costs" was "whether the expense is attributable to general ongoing operational costs as opposed to spending more directly attributable to expenditures advocating in connection with an election." *See* Tex. Ethics Comm'n Op. No. 604 (2024), (citing Tex. Ethics Comm'n Op. No. 272). More specifically, in order to qualify as "overhead" an expenditure must not be directly attributable to a single activity of the party. *Id.*

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Section 253.100 of the Election Code provides a list of expenditures that qualify as “maintenance and operation” costs, including “salaries for *routine* clerical, data entry, and administrative assistance necessary for the proper administrative operation of the committee” and “*routine* administrative expenses incurred in establishing and administering a general-purpose political committee.” Tex. Elec. Code § 253.100(a)(6), (8) (emphasis added). While Section 253.100 applies to general-purpose political committees, it is relevant in construing “normal overhead and administrative or operating costs.”

The requestor differentiates between administrative work, which is what the requestor believes that contractor would be doing, and election activity. The requestor categorizes “election activity” to include “voter contact, messaging discussion” or activity related to federal elections. The requestor asserts the contractor has not engage in “election activity.”

The budgets, spreadsheets, and hiring plan that the contractor would produce, based on the facts presented in this opinion, are comparable to office space (Advisory Opinion No. 176) or a storage container (Advisory Opinion No. 604) in that costs are attributable to general operation of the party rather than specific election activity. Therefore, the party can use funds from corporations or labor organizations to pay the contractor’s invoice.

However, the specific nature of the creation of budgets and a hiring plan will determine whether they are “maintenance and operation” costs. For example, a hiring plan to determine proper overall staffing levels for a political party is a permissible maintenance and operation cost because it is not directly “attributable to expenditures advocating in connection with an election.” See Tex. Ethics Comm’n Op. No 604 (2024). On the other hand, a hiring plan tied to a specific campaign or a hiring plan specific to the fundraising or electoral advocacy functions of a political party would be not be maintenance or operations costs.

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

Whether a judicial candidate needs to include on political advertising a disclosure regarding the candidate's acceptance or rejection of voluntary expenditure limits considering the voluntary expenditure limits have been repealed. (AOR-714)

SUMMARY

No. The law requiring a judicial candidate to disclose they have accepted or rejected the voluntary expenditure limits is no longer applicable because the expenditure limits have been repealed.

FACTS

The requestor is a judicial candidate who seeks clarity regarding the required disclosure statement on political advertising.

ANALYSIS

In 2019, the Legislature overhauled the Judicial Campaign Fairness Act, including the repeal of voluntary expenditures limits applicable to judicial candidates. Acts 2019, 86th Leg., R.S., Ch. 384 (H.B. [3233](#)), Sec. 1, eff. June 2, 2019.

Prior to the 2019 amendments, a judicial candidate was required to file a declaration whether the candidate intended to comply with voluntary expenditure limits. Rejecting the limits came with consequences. One consequence was a candidate had to include on political advertising that the candidate rejected the voluntary limits prescribed by the Judicial Campaign Fairness Act. Conversely, a candidate that declared his or her intent to comply with the limits could state that fact on political advertising.

Despite repealing expenditure limits, the Legislature did not repeal the law addressing these disclosure requirements. Tex. Elec. Code § 255.008.

The law currently states that a candidate “who files a declaration of intent to comply with the limits” may include a statement on political advertising that the advertising was paid for “in compliance with the voluntary limits of the Judicial Campaign Finance Act.” *Id.* at § 255.008(b). A candidate “who files a declaration of intent to exceed the limits” *must* include a statement on their political advertising that indicates the candidate has rejected the voluntary limits. *Id.* at 255.008(d).

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The requestor asks how he can comply with the law regarding his adherence or rejection to limits that no longer exist in statute.

Section 255.008's disclosure requirements are inoperative because the declaration that would trigger the disclosure is no longer required to be filed. Under the plain text of the existing statute, if a judicial candidate does not file a declaration to comply or reject the voluntary expenditure limits, the disclosure requirements regarding that declaration are not required. The requirement to file a declaration regarding expenditure limits was repealed with the limits in 2019 with House Bill 3233. Acts 2019, 86th Leg., R.S., Ch. 384 (H.B. [3233](#)), Sec. 1, eff. June 2, 2019. Without a declaration, the political advertising disclosures regarding the declaration are not triggered. Therefore, a judicial candidate is not required to include either statement found in Section 255.008(b) or 255.008(d).

A judicial candidate is however required to include the disclosure statement applicable to all political advertising by a candidate found in Section 255.001 of the Election Code.

ETHICS ADVISORY OPINION NO. 6xx

September 24, 2024

ISSUE

Whether Section 572.054(b) of the Government Code prohibits a former employee of a regulatory agency from receiving compensation for assisting cities and counties applying for and managing grants issued by the requestor's former state agency. (AOR-715)

SUMMARY

The Section 572.045(b) revolving door restriction does not apply to the requestor because the requestor will be providing services to only cities and counties.

FACTS

The requestor is a former employee of the Texas General Land Office (GLO) who worked as a project manager overseeing regional planning studies funded through Community Block Development Grants (CDBG) provided by the U.S. Department of Housing and Urban Development (HUD). The projects the requestor oversaw were large regional flood studies and interagency agreements with other state agencies. The requestor's position was classified above salary group A17.

The GLO has a separate planning grant program called the Resilient Communities Program (RCP). RCP awards planning grants to cities and counties for local planning activities. The requestor was not involved in the RCP program while at the GLO.

The requestor now operates his own business that provides grant services to cities and counties. The requestor now provides services including grant application assistance and management. Some of the requestor's clients are interested in applying for the Resilient Communities Program (RCP) grants funded through GLO CDBG grants.

ANALYSIS

A former employee of a state regulatory agency is generally prohibited from receiving compensation for working "on behalf of any person" on the same "particular matter" the former state employee "participated" in as an employee of the state agency. Tex. Gov't Code § 572.054(b).

The revolving door provision at issue applies only to services rendered “on behalf of any person.”

Chapter 572 of the Government Code defines “person” as “an individual or business entity” and defines “business entity” as “any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.” Tex. Gov’t Code §§ 572.002(2), 572.002(7).

The requestor states that he will be providing services only to cities and counties, which the plain language of Chapter 572 excludes from the definition of a “person.” A city or county is not an “individual,” nor is it an entity recognized by law through which “business for profit” is conducted. *Id.*; accord Tex. Ethics Comm’n Op. No. 573 (2022) (holding a state agency is not a “person” as defined by Chapter 572).

Consequently, the Section 572.054(b) revolving door provision would not apply to the requestor’s services provided to a city or county.