

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

Chase Untermeyer, Chair
Steven D. Wolens, Vice Chair
Hugh C. Akin
Jim Clancy

Chad M. Craycraft
Chris Flood
Mary K. "Katie" Kennedy
Tom Ramsay

AGENDA

Date and Time: 11:00 a.m., Thursday, March 30, 2017
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Closed Meeting.** Discussion of pending litigation to seek legal advice relating to the following:
 - A. Cause No. 14-06508-16; *Texas Ethics Commission v. Michael Quinn Sullivan*; in the 158th District Court of Denton County, Texas; and related cases, Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-09170, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*; in the 345th Judicial District Court of Travis County, Texas.
 - C. Cause No. D-1-GN-14-001252; *Empower Texans, Inc. and Michael Quinn Sullivan v. State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*; in the 53rd Judicial District Court of Travis County, Texas; and related case, Cause

For more information, contact Seana Willing, Executive Director, at (512) 463-5800.

No. 03-16-00019-CV; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission; Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission; Tom Ramsay, individually and in his capacity as Commissioner; Steven P. Wolens, individually and in his capacity as Commissioner; Hugh C. Akin, individually and in his capacity as Commissioner; James T. Clancy, individually and in his capacity as Commissioner; Wilhelmina R. Delco, individually and in her capacity as Commissioner; Mary K. Kennedy, individually and in her capacity as Commissioner; Chad M. Craycraft, individually and in his capacity as Commissioner; and Charles G. Untermeyer, individually and in his capacity as Commissioner*, in the Third Court of Appeals, Austin, Texas.

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*; in the 345th Judicial District Court of Travis County, Texas; and related case, Cause No., 03-16-00872-CV, *Empower Texans, Inc., and Michael Quinn Sullivan*, in the Third Court of Appeals, Austin, Texas.
- E. Civil Action No. 5:14-cv-00133-C; *Texas Home School Coalition Association, Inc. v. Matthew D. Powell, in his official capacity as District Attorney of Lubbock County, et al.*; in the United States District Court for the Northern District of Texas, Lubbock Division.
- F. Cause No. D-1-GN-16-000149, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*; in the 261st Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00167-CV, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Court of Appeals for the Third District of Texas at Austin.
- G. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201st Judicial District Court of Travis County, Texas.
- H. Cause No. 2016-27417; *Briscoe Cain v. Charles G. Untermeyer, in his Official Capacity as Chairman and Commissioner of the Texas Ethics Commission and Natalia Luna Ashley, in her Official Capacity as Executive Director of the Texas Ethics Commission*; in the 270th Judicial District Court of Harris County, Texas.

3. Discussion of personnel issues.

4. Reconvene in open session.

For more information, contact Seana Willing, Executive Director, at (512) 463-5800.

5. 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: Seana Willing, 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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AGENDA

Date and Time:	1:00 p.m., Thursday, March 30, 2017
Location:	Room El.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Comments by the Executive Director, including on budget issues and legislation affecting the Ethics Commission budget.
3. Comments by the Commissioners.
4. Approve minutes for the following meetings:
 - Executive Session (discussion of pending litigation) – February 15, 2017;
 - Public Meeting – February 15, 2017; and
 - Formal Hearing – February 16, 2017
5. Briefing and discussion of ethics legislation in the 2017 legislative session, including status of Ethics Commission legislative recommendations.
6. Discussion and possible action on the Ethics Commission's authority to conduct random facial compliance reviews and full audits.

RULEMAKING

7. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 6.21 (Officers of the Commission).
8. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of rules regarding the disclosure of political expenditures to vendors and others, including an amendment to Ethics Commission Rules § 20.61 (Purpose of Expenditure).

For more information, contact Seana Willing, Executive Director, at (512) 463-5800.

9. Public discussion and possible action on the authority of Ethics Commission staff to negotiate the resolution of a sworn complaint, including Ethics Commission Rules § 12.81 (Technical, Clerical, or De Minimis Violations), relating to the procedures for investigating and resolving technical and clerical violations of laws within the Commission's jurisdiction as provided by section 571.0631 of the Government Code.
10. Public discussion on drafting additional rules regarding sworn complaint procedures.

ADVISORY OPINIONS

11. Discussion of Advisory Opinion Request No. 620: Questions regarding the reporting requirements and the legislative moratorium on contributions as applied to the misappropriation and return of legislative caucus contributions.

This opinion request construes Sections 251.001, 253.0341, and 254.0311 of the Election Code.

OTHER POLICY MATTERS

12. Briefing, discussion, and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following individuals and political committee:
 1. Donica "Butch" Oberhoff (00069626)
 2. Chris Dawkins (00080764)
 3. Thomas M. Manning, Treasurer, Republican Party of Ellis County, Local (CEC) (00029533)
13. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report as originally filed substantially complied with the applicable law for the following individuals and political committees:
 1. Thresa A. 'Terry' Meza (00069649)
 2. Stanley J. 'Stan' Hartzler, Treasurer, 'CCRP' Caldwell County Republican Party (CEC) (00056214)
 3. James D. 'Jim' Blume, Treasurer, The Committee to Elect Judge Gena Slaughter (00069231)
 4. Denise Baker, Treasurer, 'DowPAC' The Dow Chemical Company Employees PAC (00016018)
 5. Leann K. Rafferty (00080287)

6. John Halloran Romanow, Treasurer, 'TAS-PAC' Texas Assn. Of Staffing PAC (00016232)
14. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive individuals and political committees:

Individuals

1. Michael Alan Dougan (00060199)
2. Beverly Watts Davis (00080262)
3. Mari Aguirre-Rodriguez (00080441)

Political Committees

4. Jein Gadson, Treasurer, Key PAC (00065246)
5. Jared G. LeBlanc, Treasurer, New Leaders Texas PAC (00067438)
6. Virginia White, Treasurer, Midland County Texas Democratic Women (00070088)
7. Lydia B. Garza, Treasurer, American Protection Specialists – PAC (00070311)
8. Brandy J. Dougan, Treasurer, Politics Hub (00080098)
9. Corey W. Nation, Treasurer, Poker in Texas (00080136)
15. Communication to the Commission from the public.
16. 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: Seana Willing, 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.

The draft meeting minutes are currently available on our website at *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:

EXHIBIT A**2017 Facial Compliance Reviews**

A total of **72 facial compliance reviews** (FCRs) have been conducted as of March 15, 2017, in calendar year 2017.

Filer Type:	# of FCRs	Closed	In Progress	Awaiting Corrective Action
Specific Purpose Committee (SPAC)	2	2		
Lobbyist (LOBB)	20	19		1
Candidate/Officeholder (Non-judicial) (COH)	20	15		5
Judicial Candidate/Officeholder (JCOH)	30	15	10	5
Total	72	51	10	11

1. # of reviews conducted this calendar year - **72**
2. # of reviews that had deficiencies - **22**
3. # of reviews with no errors - **40**
4. # of reviews in progress - **10**

Exhibit B

Section 571.069 of the Government Code. Review of Statements and Reports; Audits

(a) The commission shall review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents. The commission shall return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

(1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and

(2) the resubmitted statement or report complies with law.

(b) The commission may by a vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

(1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;

(2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or

(3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

(1) was previously public information; or

(2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state.

(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

EXHIBIT A

Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

The deleted language is indicated by [~~striketrough~~] text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

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.

(b) Commission officers are elected annually by majority vote of the commission. The election shall take place at the first commission meeting [~~scheduled~~] held after [~~November 19~~] June 1 of each year. Each officer shall serve until his or her successor is selected.

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

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

(e) [~~(e)~~] 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 [~~subcommittees~~] and persons to chair committees, [~~subcommittees,~~] 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. When the presiding officer is absent, the vice-presiding officer shall perform all duties of the presiding officer.

(f) The presiding officer may perform the following actions between regular meetings of the commission:

(1) Sign subpoenas and orders;

(2) Schedule hearings and meetings;

(3) Timely respond to litigation matters on behalf of the commission when action is required before the next scheduled meeting; and

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

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

Texas Ethics Commission Rules

CHAPTER 12. SWORN COMPLAINTS

Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW

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

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

- (1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;
- (2) Failure to include a disclosure statement on political advertising;
- (3) Failure of a non-incumbent to use the word “for” in a campaign communication, where the communication is not otherwise misleading;
- (4) Failure to include the highway right-of-way notice on political advertising;
- (5) Filing a late campaign finance report if the total amount of political contributions does not exceed \$2,500, the total amount of political expenditures does not exceed \$2,500, and the report is not a report due 30 or 8 days before an election, or a special pre-election report;
- (6) Filing an incomplete or corrected campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report if:
 - (A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 10% of the total amount of political contributions on the corrected report, or \$5,000; or
 - (B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 10% of the total amount of political expenditures on the corrected report, or \$5,000; or
 - (C) the total amount of incomplete or incorrectly reported political contributions or political expenditures does not exceed the amount of the filing fee for a place on the ballot for the office sought or held by the respondent during the period covered by the report at issue, or, if there is not a set filing fee, \$500; or
- (7) Failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500.

(b) A technical, clerical, or *de minimis* violation for purposes of section 571.0631 of the Government Code may include allegations against a respondent for:

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

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

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

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

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or *de minimis* under subsection (a) of this section, 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.

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

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

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

EXHIBIT A

SUBCHAPTER E. COMPLAINT PROCEDURES AND HEARINGS

Sec. 571.121. General Powers

(a) The commission may:

(1) hold hearings, on its own motion adopted by an affirmative vote of at least six commission members or on a sworn complaint, and render decisions on complaints or reports of violations as provided by this chapter; and

(2) agree to the settlement of issues.

(b) The commission may not consider a complaint or vote to investigate a matter outside the commission's jurisdiction.

Sec. 571.1211. Definitions

In this subchapter:

(1) "Campaign communication" and "political advertising" have the meanings assigned by Section 251.001, Election Code.

(2) "Category One violation" means a violation of a law within jurisdiction of the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:

(A) the failure by a person required to file a statement or report to:

(i) file the required statement or report in a manner that complies with applicable requirements; or

(ii) timely file the required statement or report;

(B) a violation of Section 255.001, Election Code;

(C) a misrepresentation in political advertising or a campaign communication relating to the office held by a person in violation of Section 255.006, Election Code;

(D) a failure to include in any written political advertising intended to be seen from a road the right-of-way notice in violation of Section 255.007, Election Code; or

(E) a failure to timely respond to a written notice under Section 571.123(b).

(3) "Category Two violation" means a violation of a law within the jurisdiction of the commission that is not a Category One violation.

Sec. 571.1212. Categorization of Violations

An allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the executive director at any time determines that:

- (1) the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or
- (2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 571.1242(a).

Sec. 571.122. Filing of Complaint; Contents

(a) An individual may file with the commission a sworn complaint alleging that a person subject to a law administered and enforced by the commission has violated a rule adopted by or a law administered and enforced by the commission. A sworn complaint must be filed on a form prescribed by the commission. The commission shall make the complaint form available on the Internet. The form prescribed by the commission must require the complainant to provide the following information for both the complainant and the respondent:

- (1) the person's name;
- (2) the person's telephone number;
- (3) the person's electronic mail address, if known; and
- (4) the physical address of the person's home or business.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

- (1) the name of the complainant;
- (2) the street or mailing address of the complainant;
- (3) the name of each respondent;
- (4) the position or title of each respondent;
- (5) the nature of the alleged violation, including if possible the specific rule or provision of law alleged to have been violated;
- (6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
- (7) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 1166 (H.B. 3218), Sec. 1

(b-1) An individual must be a resident of this state to be eligible to file a sworn complaint with the commission. A copy of one of the following documents must be attached to the complaint:

(1) the complainant's driver's license or personal identification certificate issued under Chapter 521, Transportation Code, or commercial driver's license issued under Chapter 522, Transportation Code; or

(2) a utility bill, bank statement, government check, paycheck, or other government document that:

(A) shows the name and address of the complainant; and

(B) is dated not more than 30 days before the date on which the complaint is filed.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 604 (H.B. 677), Sec. 2

(b-1) To be eligible to file a sworn complaint with the commission, an individual must be a resident of this state or must own real property in this state. A copy of one of the following documents must be attached to the complaint:

(1) the complainant's driver's license or personal identification certificate issued under Chapter 521, Transportation Code, or commercial driver's license issued under Chapter 522, Transportation Code;

(2) a utility bill, bank statement, government check, paycheck, or other government document that:

(A) shows the name and address of the complainant; and

(B) is dated not more than 30 days before the date on which the complaint is filed; or

(3) a property tax bill, notice of appraised value, or other government document that:

(A) shows the name of the complainant;

(B) shows the address of real property in this state; and

(C) identifies the complainant as the owner of the real property.

(c) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforced by the commission.

(e) It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution.

Sec. 571.1221. Dismissal of Complaint Filed at Direction or Urging of Nonresident

At any stage of a proceeding under this subchapter, the commission shall dismiss the complaint if the commission determines that the complaint was filed at the direction or urging of a person who is not a resident of this state.

Sec. 571.1222. Dismissal of Complaint Challenging Certain Information in Political Report

At any stage of a proceeding under this subchapter, the commission shall dismiss a complaint to the extent the complaint alleges that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution.

Sec. 571.123. Processing of Complaint

(a) The commission shall determine whether a sworn complaint filed with the commission complies with the form requirements of Section 571.122.

(b) After a complaint is filed, the commission shall immediately attempt to contact and notify the respondent of the complaint by telephone or electronic mail. Not later than the fifth business day after the date a complaint is filed, the commission shall send written notice to the complainant and the respondent. The written notice to the complainant and the respondent must:

- (1) state whether the complaint complies with the form requirements of Section 571.122;
- (2) if the respondent is a candidate or officeholder, state the procedure by which the respondent may designate an agent with whom commission staff may discuss the complaint; and
- (3) if applicable, include the information required by Section 571.124(e).

(c) If the commission determines that the complaint does not comply with the form requirements, the commission shall send the complaint to the complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. The commission shall send a copy of the rejected complaint to the respondent with the written notice and the statement explaining how the complaint fails to comply. The complainant may resubmit the complaint not later than the 21st day after the date the notice under Subsection (b) is mailed. If the commission determines that the complaint is not resubmitted within the 21-day period, the commission shall:

- (1) dismiss the complaint; and
- (2) not later than the fifth business day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the commission determines that a complaint is resubmitted under Subsection (c) within the 21-day period but is not in proper form, the commission shall send the notice required under Subsection (c), and the complainant may resubmit the complaint under that subsection.

(e) If the commission determines that a complaint returned to the complainant under Subsection (c) or (d) is resubmitted within the 21-day period and that the complaint complies with the form requirements, the commission shall send the written notice under Subsection (b).

Sec. 571.1231. Designation of Agent by Certain Respondents

- (a) This section applies only to a respondent who is a candidate or officeholder.
- (b) A respondent to a complaint filed against the respondent may by writing submitted to the commission designate an agent with whom the commission staff may communicate regarding the complaint.
- (c) For purposes of this subchapter, including Section 571.140, communications with the respondent's agent designated under this section are considered communications with the respondent.

Sec. 571.124. Preliminary Review: Initiation

- (a) The commission staff shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122.
- (b) On a motion adopted by an affirmative vote of at least six commission members, the commission, without a sworn complaint, may initiate a preliminary review of the matter that is the subject of the motion.
- (c) The executive director shall determine in writing whether the commission has jurisdiction over the violation of law alleged in a sworn complaint processed under Section 571.123.

Subsection (d) repealed by Acts 2003, 78th Leg., R.S., H.B. 1606, Sec. 1.33, eff. Sept. 1, 2003.

- (e) If the executive director determines that the commission has jurisdiction, the notice under Section 571.123(b) must include:

- (1) a statement that the commission has jurisdiction over the violation of law alleged in the complaint;
- (2) a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 571.1212;
- (3) the date by which the respondent is required to respond to the notice;
- (4) a copy of the complaint and the rules of procedure of the commission;
- (5) a statement of the rights of the respondent;
- (6) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and
- (7) a statement that a failure to timely respond to the notice will be treated as a separate violation.

- (f) If the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, the executive director shall:

- (1) dismiss the complaint; and
- (2) not later than the fifth business day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

Sec. 571.1241. Review of Executive Director's Determination of No Jurisdiction

(a) If the executive director determines that the commission does not have jurisdiction over the violation alleged in the complaint, the complainant may request that the commission review the determination. A request for review under this section must be filed not later than the 30th day after the date the complainant receives the executive director's determination.

(b) The commission may reverse the executive director's determination only on the affirmative vote of at least six members.

(c) Not later than the fifth business day after the date of the commission's determination under this section, the commission shall send written notice to the complainant and the respondent stating whether the commission has jurisdiction over the violation alleged in the complaint. If the commission determines that the commission has jurisdiction, the notice must include the items listed in Section 571.124(e).

Sec. 571.1242. Preliminary Review: Response by Respondent

(a) If the alleged violation is a Category One violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 10th business day after the date the respondent receives the notice; and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 30th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(b) If the alleged violation is a Category Two violation:

(1) the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice under Section 571.123(b); and

(2) if the matter is not resolved by agreement between the commission and the respondent before the 75th business day after the date the respondent receives the notice under Section 571.123(b), the commission shall set the matter for a preliminary review hearing to be held at the next commission meeting for which notice has not yet been posted.

(c) A respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a Category One violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) If the commission sets the matter for a preliminary review hearing, the commission shall promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Sec. 571.1243. Preliminary Review: Written Questions

During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Sec. 571.1244. Preliminary Review and Preliminary Review Procedures

The commission shall adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The procedures must include:

(1) a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and

(2) the tolling or extension of otherwise applicable deadlines where:

(A) the commission issues a subpoena and the commission's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines; or

(B) the commission determines that, despite commission staff's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the commission staff's investigation or the rights of the respondent.

Sec. 571.125. Preliminary Review Hearing: Procedure

(a) The commission shall conduct a preliminary review hearing if:

(1) following the preliminary review, the commission and the respondent cannot agree to the disposition of the complaint or motion; or

(2) the respondent in writing requests a hearing.

(b) The commission shall provide written notice to the complainant, if any, and the respondent of the date, time, and place the commission will conduct the preliminary review hearing.

(c) At or after the time the commission provides notice of a preliminary review hearing, the commission may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time.

(d) During a preliminary review hearing, the commission:

(1) may consider all submitted evidence related to the complaint or to the subject matter of a motion under Section 571.124(b);

(2) may review any documents or material related to the complaint or to the motion; and

(3) shall determine whether there is credible evidence that provides cause for the commission to conclude that a violation within the jurisdiction of the commission has occurred.

(e) During a preliminary review hearing, the respondent may appear before the commission with the assistance of counsel, if desired by the respondent, and present any relevant evidence, including a written statement.

Sec. 571.126. Preliminary Review Hearing: Resolution

(a) As soon as practicable after the completion of a preliminary review hearing, the commission by vote shall issue a decision stating:

(1) whether there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis; or

(2) that there is insufficient evidence for the commission to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the commission determines that there is credible evidence for the commission to determine that a violation has occurred, the commission shall resolve and settle the complaint or motion to the extent possible. If the commission successfully resolves and settles the complaint or motion, not later than the fifth business day after the date of the final resolution of the complaint or motion, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the resolution and the terms of the resolution. If the commission is unsuccessful in resolving and settling the complaint or motion, the commission shall:

(1) order a formal hearing to be held in accordance with Sections 571.129 through 571.132; and

(2) not later than the fifth business day after the date of the decision, send to the complainant, if any, and the respondent:

(A) a copy of the decision;

(B) written notice of the date, time, and place of the formal hearing;

(C) a statement of the nature of the alleged violation;

(D) a description of the evidence of the alleged violation;

(E) a copy of the complaint or motion;

(F) a copy of the commission's rules of procedure; and

(G) a statement of the rights of the respondent.

(c) If the commission determines that there is credible evidence for the commission to determine that a violation within the jurisdiction of the commission has not occurred, the commission shall:

(1) dismiss the complaint or motion; and

(2) not later than the fifth business day after the date of the dismissal, send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the commission determines that there is insufficient credible evidence for the commission to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or motion or promptly conduct a formal hearing under Sections 571.129 through 571.132. Not later than the fifth business day after the date of the commission's determination under this subsection, the commission shall send to the complainant, if any, and the respondent a copy of the decision stating the commission's determination and written notice of the grounds for the determination.

Sec. 571.129. Formal Hearing: Standard of Evidence

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

Sec. 571.130. Formal Hearing: Subpoenas and Witnesses

(a) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if desired.

(b) Except as provided by Section 571.131(a)(1), the commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

- (1) request to appear personally before the commission to testify in the person's own behalf; or
- (2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing must be sworn.

Sec. 571.131. Formal Hearing: Procedure

(a) Not later than the fifth business day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, the commission shall provide to the complainant, if any, and to the respondent:

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

(b) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001.

Sec. 571.132. Formal Hearing: Resolution

(a) Not later than the 30th business day after the date the State Office of Administrative Hearings issues a proposal for decision, the commission shall convene a meeting and by motion shall issue:

(1) a final decision stating the resolution of the formal hearing; and

(2) a written report stating in detail the commission's findings of fact, conclusions of law, and recommendation of criminal referral or imposition of a civil penalty, if any.

(b) The motion must be adopted by a vote of at least six members if the final decision is that a violation has occurred or by five members if the final decision is that a violation has not occurred.

(c) Not later than the fifth business day after the date the commission issues the final decision and written report, the commission shall:

(1) send a copy of the decision and report to the complainant, if any, and to the respondent; and

(2) make a copy of the decision and report available to the public during reasonable business hours.

Sec. 571.133. Appeal of Final Decision

(a) To appeal a final decision of the commission, the respondent or the respondent's agent may file a petition in a district court in Travis County or in the county in which the respondent resides.

(b) The petition must be filed not later than the 30th business day after the date the respondent received the decision.

(c) Not later than the 30th day after the date on which the petition is filed, the respondent may request that the appeal be transferred to a district court in Travis County or in the county in which the respondent resides, as appropriate. The court in which the appeal is originally filed shall transfer the appeal to a district court in the other county on receipt of the request.

(d) An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

Sec. 571.1351. Status of Complaint

(a) The commission shall keep an information file about each sworn or other complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) In addition to the notice required by Sections 571.123 through 571.132, the commission, at least quarterly until final disposition of a complaint, shall notify the person who filed the complaint and each person who is a subject of the complaint, if any, of the status of the sworn or other complaint.

Sec. 571.136. Extension of Deadline

The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing.

Sec. 571.137. Subpoena

(a) In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(a-1) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least six members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

- (1) is likely to be determinative as to whether the subject of an investigation has violated a law within the jurisdiction of the commission;
- (2) can be determined from the documents or is known by the witnesses; and
- (3) is not reasonably available through a less intrusive means.

(a-2) The commission shall adopt procedures for the issuance of subpoenas under this section.

(a-3) A copy of a subpoena issued under this section must be delivered to the respondent.

(b) At the written request of at least six members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(c) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the

demand was made, the commission shall report that fact to a district court in Travis County. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(d) A respondent has the right to quash a subpoena as provided by law.

(e) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

Sec. 571.138. Status of Complainant

The complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

Sec. 571.139. Applicability of Other Acts

(a) Except as provided by Section 571.140(b), Chapter 552 does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion.

(b) Chapter 551 does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion, but does apply to a formal hearing held under Sections 571.129 through 571.131.

(c) Subchapters C-H, Chapter 2001, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Texas Ethics Commission Rules on Sworn Complaints

Chapter 12. SWORN COMPLAINTS

Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§ 12.5. Deadline for Filing a Complaint

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

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

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

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

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

§ 12.6. File Date for Purposes of Commission Response Deadline

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

§ 12.7. Confidentiality

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

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

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

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

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

§ 12.11. Delegation to Executive Director

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

§ 12.13. Representation by Counsel

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

§ 12.15. Appearance of Complainant at Hearing

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

§ 12.19. 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; or
- (2) entered into the record during the course of a hearing.

§ 12.21. 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 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 by the complainant or to the address most recently provided by the respondent.

(c) Notice of a hearing must be given at least 10 business 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 matters asserted.

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

(e) 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.

§ 12.23. Hearing in Respondent's Absence

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

§ 12.25. Waiver of Hearing

A respondent may waive the right to a hearing.

§ 12.27. Deadline Extension

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

§ 12.29. Subpoenas

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

(b) A subpoena 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.

§ 12.35. Frivolous Complaint

(a) By a record vote of at least six commissioners, the commission may order a complainant to show cause why the commission should not determine that the complaint filed by the complainant is a frivolous complaint.

(b) 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.

(c) Notice of a show cause hearing must be given at least 10 business days before the date of the hearing. Notice shall be sent by registered or certified mail, restricted delivery, return receipt requested.

(d) Notice of an order to show cause shall include:

- (1) an explanation of why the complaint appears to be frivolous; and
- (2) the date, time, and place of the show cause hearing to be held under subsection (e) of this section.

(e) Before making a determination that a complaint is a frivolous complaint, the commission shall hold a hearing at which the complainant may be heard and may be represented by counsel retained by the complainant.

Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

§ 12.51. Non-Complying Complaint

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

- (1) the complaint includes an allegation of conduct that the commission has previously determined is not a violation of a statute or rule within the commission's jurisdiction; and
- (2) before the complaint was filed the complainant was provided notice that such conduct is an invalid basis for an allegation.

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

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

§ 12.52. 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.

§ 12.53. Commission Initiated Complaint

(a) 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.

(b) 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.

(c) 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.

§ 12.59. 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.

§ 12.61. 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 must disclose the specific date or dates on which the alleged violation occurred, if that date is known to the complainant. If the complainant is unable to provide a specific date for the violation, the complaint must disclose a specific period of time during which the alleged violation may have occurred.

(c) 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.

§ 12.67. Copies and Documents Provided by the Commission

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

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

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

Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW

§ 12.81. Technical, Clerical, or De Minimis Violations

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

- (1) Typographical or incomplete information on a campaign finance report that is not misleading or does not substantially affect disclosure;
- (2) Failure to include a disclosure statement on political advertising;
- (3) Failure of a non-incumbent to use the word “for” in a campaign communication, where the communication is not otherwise misleading;
- (4) Failure to include the highway right-of-way notice on political advertising;
- (5) Filing a late campaign finance report if the total amount of political contributions does not exceed \$2,500, the total amount of political expenditures does not exceed \$2,500, and the report is not a report due 30 or 8 days before an election, or a special pre-election report;
- (6) Filing an incomplete or corrected campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report if:
 - (A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 10% of the total amount of political contributions on the corrected report, or \$5,000; or
 - (B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 10% of the total amount of political expenditures on the corrected report, or \$5,000; or
 - (C) the total amount of incomplete or incorrectly reported political contributions or political expenditures does not exceed the amount of the filing fee for a place on the ballot for the office sought or held by the respondent during the period covered by the report at issue, or, if there is not a set filing fee, \$500; or
- (7) Failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500.

(b) A technical, clerical, or de minimis violation for purposes of section 571.0631 of the Government Code may include allegations against a respondent for:

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

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

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

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

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or de minimis under subsection (a) of this section, 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.

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

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

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

§ 12.83. Preliminary Review

(a) A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent pursuant to section 571.1243 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period beginning on the date the commission sends the written questions and ending on the date the commission receives the respondent's written response.

(c) 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 time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period beginning on the date the staff applies to the commission for the subpoena and ending 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 reports to a district court pursuant to section 571.137(c) of the Government Code.

(d) The executive director may report to the commission any findings and conclusions from a preliminary review of a complaint.

§ 12.85. Preliminary Review Hearing

The executive director and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

§ 12.87. Resolution of Preliminary Review Hearing

The executive director shall dismiss a complaint if the commission fails to issue a decision under section 571.126 of the Government Code within 180 days after a preliminary review hearing.

Subchapter E. FORMAL HEARING

§ 12.117. 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.

§ 12.119. Resolution after a Formal Hearing

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.

ETHICS ADVISORY OPINION NO. ____

March 30, 2017

Regarding the reporting requirements and the legislative moratorium on contributions as applied to the misappropriation and return of legislative caucus contributions. (AOR-620)

A legislative caucus¹ asks the Texas Ethics Commission (commission) whether the misappropriation and return of the caucus's contributions must be reported. Secondly, the caucus asks whether the return of the contributions violates the statutory moratorium on contributions from non-members of the caucus.

The caucus states that a caucus employee misappropriated funds in the caucus's bank account over a period of three years by making various unauthorized expenditures for air travel, hotel accommodations, dining, ground transportation, and cash advances without the prior knowledge or consent of the caucus. The caucus terminated the employee and took necessary steps to secure its accounts and ensure that no further access was granted to the employee. The caucus asks the following questions:

1. Whether the misappropriation of the funds belonging to the caucus is a reportable expenditure.
2. Whether the return of the funds is a reportable contribution.
3. Whether the caucus may accept the return of the funds during the legislative moratorium.

Analysis

Reporting by the Legislative Caucus

Section 254.0311 of the Election Code requires a legislative caucus to file semiannual reports with the commission including, in part, "the amount of expenditures ... that are made during the reporting period," including an itemization of expenditures that in the aggregate exceed \$50 and other total amounts of expenditures made during the reporting period. Elec. Code § 254.0311(b)(3)-(5). A report must also include, in part, "the amount

¹ A legislative caucus is defined as an organization that is composed exclusively of members of the legislature, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. The term includes an entity established by or for a legislative caucus to conduct research, education, or any other caucus activity. An organization whose only nonlegislator members are the lieutenant governor or the governor remains a "legislative caucus." Elec. Code § 253.0341(e).

of contributions ... that are accepted during the reporting period by the legislative caucus” from persons who are not caucus members. *Id.* § 254.0311(b)(1). A report must also include “the total amount or a specific listing of contributions of \$50 or less accepted from persons other than caucus members” and “the total amount of all contributions accepted.” *Id.* § 254.0311(b)(4), (5).

An “expenditure” is defined, in part, as “a payment of money or any other thing of value.” *Id.* § 251.001(6). The disclosure requirement applies to expenditures made by a caucus. In our opinion, a misappropriation of caucus funds that occurs without authorization by the caucus is not an expenditure made by the caucus. Thus, the misappropriation in such circumstances is not a reportable expenditure.

Similarly, the disclosure requirement applies to a contribution accepted by the caucus. A “contribution” is defined, in part, as “a direct or indirect *transfer* of money, goods, services, or any other thing of value.” *Id.* § 251.001(2) (emphasis added). We do not think a return of funds to a caucus is a “transfer” to the caucus if the caucus had not relinquished control or ownership over the funds.² Thus, the misappropriation and return of caucus funds is not a contribution to the caucus. Accordingly, the caucus would not be required to report the return of the funds as a contribution.

Legislative Moratorium on Contributions from Nonmembers

Section 253.0341 of the Election Code prohibits a legislative caucus from knowingly accepting a contribution from a person who is not a member of the caucus 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. *Id.* § 253.0341(b).³ The issue is whether the return of the misappropriated funds to the caucus during that period is prohibited.

As stated previously, the return of the funds in these circumstances does not constitute a “contribution” to the caucus. Therefore, section 253.0341 of the Election Code would not prohibit the caucus from receiving and accepting the return of its misappropriated funds by the former employee during the legislative moratorium.

SUMMARY

Under the facts presented, a legislative caucus would not be required to disclose the misappropriation of its funds by a former employee as an expenditure or disclose the return of those funds by the former employee as a contribution. The legislative moratorium on contributions to the caucus from nonmembers would not prohibit the caucus from accepting the return of those misappropriated funds by the former employee.

² A “transfer” is defined, in part, as “[a]ny mode of disposing of or parting with an asset or an interest in an asset” and “[a] conveyance of property or title from one person to another.” Black’s Law Dictionary 1727 (10th ed. 2014).

³ A contribution received during that period shall be refused and returned to the contributor not later than the 30th day after the date of receipt. *Id.* § 253.0341(b).

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

§ 18.24. General Guidelines for Other Administrative Waiver or Reduction of Fine

(a) A filer who does not qualify for a waiver under section 18.23 of this title (relating to Administrative Waiver of Fine) may request the executive director to waive a late fine by submitting an affidavit to the executive director. The executive director may waive or reduce the late fine if the filer meets the criteria and the late report meets the qualifications under the guidelines set out in sections 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) and 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title.

(b) For purposes of determining a waiver or reduction of a late fine under sections 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) and 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title, a late report will be classified by report type, as follows:

(1) Any report that is not a critical report as defined under subsection (b)(2) will be classified as Report Type I and considered under section 18.25 of this title (relating to Administrative Waiver or Reduction of Fine: Report Type I).

(2) A critical report will be classified as Report Type II and considered under section 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II). A "critical report" is:

- (A) a campaign finance pre-election report due 30 days before an election;
- (B) a campaign finance pre-election report due 8 days before an election;
- (C) a runoff report;
- (D) a daily special pre-election report required under Section 254.038 or 254.039, Election Code;
- (E) a semiannual report subject to the higher statutory fine under Section 254.042, Election Code; or
- (F) a personal financial statement required under Section 572.027, Government Code, if the filer is a candidate with an opponent on the ballot in a primary election.

(c) For purposes of determining a waiver or reduction of a late fine under sections 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) and 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title, a filer requesting a waiver or reduction of a late fine will be categorized by filer type, as follows:

(1) Category A includes candidates for and officeholders of the following offices and specific-purpose committees supporting candidates for and officeholders of the following offices:

- (A) statewide office;
- (B) legislative office;
- (C) district judge;
- (D) state appellate court justice;
- (E) State Board of Education member; and
- (F) Secretary of State.

(2) Category B includes all filers not categorized in Category A, as defined by subsection (c)(1) of this section, or Category C, as defined by subsection (c)(3) of this section. Examples of Category B filers include the following filer types:

- (A) lobbyists;
- (B) salaried non-elected officials;
- (C) candidates for and officeholders of district attorney;
- (D) candidates for and officeholders of political party chair; and
- (E) political committees with \$3,000 or more in annual activity in the calendar year in which the late report was due.

(3) Category C includes:

- (A) unsalaried appointed board members and officials; and
- (B) political committees with less than \$3,000 in annual activity in the calendar year in which the late report was due.

(d) For purposes of a reduction of a late fine under sections 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) and 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title, the following explanations will be accepted as showing good cause:

- (1) The report was filed no more than one day late.
- (2) The report was filed within seven days of receipt of a late notice.

(3) The report was not a critical report and was prepared and placed in the mail on time but not postmarked by the deadline.

(4) The filer had technical difficulties after regular business hours, but the report was filed on the next business day that the commission's technical support staff was at work.

(5) The filer's address changed and the filer did not receive notice of the filing deadline.

(6) There are no funds in the filer's campaign or officeholder account and the filer is unemployed.

(7) A first-time filer that is required to file campaign finance reports with a county filing authority and personal financial statements with the commission, who mistakenly files the personal financial statement with the county on the filing deadline and then correctly files with the commission within seven days of realizing the mistake.

(e) For purposes of a reduction of a late fine under sections 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) and 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title, the following explanations will not be accepted as showing good cause:

(1) The filer did not know the report was due.

(2) The filer forgot or the person assigned by the filer to prepare the report forgot.

(3) The campaign was very time-consuming.

(4) The filer's job was very time-consuming.

(5) The filer was too overwhelmed by responsibilities to file the report on time.

(6) The filer was a candidate who lost an election and did not know to terminate his or her campaign treasurer appointment and file a final report.

(7) The filer left his or her position and did not know he or she was still required to file a report.

(f) A late fine that is reduced under section 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) or 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title will revert to the full amount originally assessed if the reduced fine is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(g) A filer may appeal a determination made under section 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) or 18.26 (relating to Administrative Waiver or

Reduction of Fine: Report Type II) of this title by submitting a request in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) After hearing a request for appeal, the commission may affirm the determination made under section 18.25 (relating to Administrative Waiver or Reduction of Fine: Report Type I) or 18.26 (relating to Administrative Waiver or Reduction of Fine: Report Type II) of this title or make a new determination based on facts presented in the appeal.

§ 18.25. Administrative Waiver or Reduction of Fine: Report Type I

(a) The executive director shall apply the guidelines set out in this section to a late report classified as Report Type I under section 18.24(b) of this title.

(b) In order to qualify for a waiver or reduction of a late fine under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The filer filed the report within thirty (30) days of learning the report was late;

(3) The filer has not had the late fine for the report at issue increased by the commission at a public meeting pursuant to Section 254.042(b), Election Code, or Section 305.033(c) or 572.033(b), Government Code; and

(4) The filer does not have an outstanding late fine.

(c) The executive director shall use the following levels chart to determine the level of waiver or reduction of a late fine under this section:

**Report Type I Levels Chart
(For All Reports Other Than Critical Reports)**

Level	# of Priors in Last 5 Years	Category A	Category B	Category C	Explanatory Note
1	0	Waiver	Waiver	Waiver	
1.5	1	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	1	\$300	\$200	\$100	
2.5	2	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	2	\$500	\$500	\$250	

*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(d) of this title.

§ 18.26. Administrative Waiver or Reduction of Fine: Report Type II

(a) The executive director shall apply the guidelines set out in this section to a late report classified as Report Type II under section 18.24(b) of this title.

(b) In order to qualify for a waiver or reduction of a late fine under this section, a filer must meet all of the following criteria:

- (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;
- (2) The filer has not had the late fine for the report at issue increased by the commission at a public meeting pursuant to Section 254.042(b), Election Code, or Section 305.033(c) or 572.033(b), Government Code; and
- (3) The filer does not have an outstanding late fine.

(c) The executive director shall use the following levels chart to determine the level of waiver or reduction of a late fine under this section if:

- (1) The late report at issue discloses less than \$3,000 in total contributions and less than \$3,000 in expenditures for the reporting period;
- (2) The late report at issue was filed no more than thirty (30) days after the filer learned that the report was late; and
- (3) The filer has no prior late offenses or only one prior late offense in the five (5) years preceding the filing deadline of the late report at issue.

**Report Type II Levels Chart
(For Critical Reports under section 18.26(c))**

Level	# of Priors in Last 5 Years	Category A	Category B	Category C	Explanatory Note
1.5	0	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	0	\$300	\$200	\$100	
2.5	1	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	1	\$500	\$500	\$250	

*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(d) of this title.

(d) The executive director shall use the following formulas chart to determine the level of waiver or reduction of a late fine under this section if:

- (1) The late report at issue discloses either \$3,000 or more in total contributions or \$3,000 or more in expenditures for the reporting period;
- (2) The late report at issue was filed over thirty (30) days after the filer learned that the report was late; or
- (3) The filer has two (2) prior late offenses in the five (5) years preceding the filing deadline of the late report at issue.

**Report Type II Formulas Chart
(For Critical Reports under section 18.26(d))**

Category A

No Good Cause	Explanatory Notes
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 for every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
Good Cause Shown	Explanatory Notes
Starting Fine = \$150 (0 priors); or Starting Fine = \$400 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Category B

No Good Cause	Explanatory Notes
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
Good Cause Shown	Explanatory Notes
Starting Fine = \$100 (0 priors); or Starting Fine = \$300 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Category C

No Good Cause	Explanatory Notes
Starting Fine = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
Good Cause Shown	Explanatory Notes
Starting Fine = \$50 (0 priors); or Starting Fine = \$150 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

(e) Comments:

Report Type II Formulas Chart Examples:

- (1) Candidate X seeking the office of State Representative (Category A filer type)
Report: 30-day pre-election report due February 3, 2014 (Report Type II)
Filed Date: February 4, 2014 (1 day late; good cause under section 18.24(d))
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)
Prior offenses: none
Penalty: \$500
Determination: reduction to \$150

Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late)

- (2) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)
Report: 30-day pre-election report due February 3, 2014 (Report Type II)
Filed Date: February 4, 2014 (1 day late; good cause under section 18.24(d))
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)
Prior offenses: two prior late reports in the last five years
Penalty: \$500
Determination: reduction to \$300

Formula Calculation = \$300 (Category B, Good Cause, 2 Priors, 1st day late)

- (3) Candidate Y seeking the office of District Judge (Category A filer type)
Report: 8-day pre-election report due February 24, 2014 (Report Type II)
Filed Date: March 20, 2014 (24 days late; filed within 7 days of late notice; good cause under section 18.24(d))
Activity: contributions = \$10,000; expenditures = \$5,000 (use Formulas Chart)
Prior offenses: none
Penalty: \$2,800
Determination: reduction to \$1,150

Formula Calculation = \$150 (Category A, Good Cause, 0 Priors, 1st day late) + \$1,000 (next 10 days late @ \$100 per day) + \$0 (remaining 13 days late do not add up to full 30-day segment) = \$1,150.

(4) Large GPAC filing under the regular (semiannual) filing schedule (Category B filer type)

Report: 30-day pre-election report due February 3, 2014 (Report Type II)

Filed Date: April 4, 2014 (60 day late)

Activity: contributions = \$10,000; expenditures = \$5,000

Prior offenses: five prior late reports in the last five years

Penalty: \$500

Determination: no waiver

Filer did not meet the criteria under subsection (b)(1) of this section because the filer has over two prior late offenses in the five years preceding the report due date.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: March 16, 2017
SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)
Meeting Date: March 30, 2017

The following filers submitted requests for an appeal regarding a determination previously made under section 18.25 or 18.26 of the Ethics Commission Rules (relating to Administrative Waiver or Reduction of Fine). The Commission may vote to affirm the determination made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding an appeal, unless specifically noted **in bold**.

REPORT TYPE I: NON-CRITICAL REPORTS

TEC Rules Determination: I-B – Levels Chart - Level 2.5 – Reduction to \$300 (Item 1):

1. Donica 'Butch' Oberhoff (69626)
Lobbyist

Report: monthly lobby activities report due October 11, 2016
File date: October 25, 2016 (14 days late)
Prior offenses: July 2014 lobby activities report (\$500 fine waived because no prior offenses and no activity to report); and September 2014 lobby activities report (\$500 fine reduced to \$100 under Report Type I-B, Lev. 1.5; paid)
Penalty: \$500 – reduction to \$300

Basis: Not a critical report; Category B filer; two prior late-filing offenses in the last five years; good cause shown.

On January 12, 2017, the Commission sent a determination letter informing Mr. Oberhoff that he is eligible for a reduction of the late-filing penalty to \$300 under the Ethics Commission Rules. The letter requested that he remit the payment by February 13, 2017, or request appeal.

Request for Appeal: On January 26, 2017, the Commission received his appeal. In his sworn statement, Mr. Oberhoff stated:

I am grateful for the reduction, but I am respectfully asking for a further reduction or full waiver. I am not an independent lobbyist with many clients. I register as a lobbyist only to do advocacy work for my employer, among my other duties. On the report in question, there were no activities to report, much like most of my monthly reports. And in fact, I honestly thought I filed it timely. Apparently, I completed the form, but failed to click "submit" correctly. When I received the notice from the Ethics Commission, I logged back in and the report was already completed, but not submitted.

Because there was no activity on the report in question, and because the failure to be timely was due to a missed keystroke, and not disregard for the rules, I am hoping the commission will grant me a further reduction in the penalty or a full waiver.

REPORT TYPE II: CRITICAL REPORTS

TEC Rules Determination: II-A – Levels Chart and Formulas Chart (Item 2):

2. **Chris Dawkins (80764)**
Candidate, State Representative

- 1) Report: 30-day pre-election report due April 7, 2016
File date: May 16, 2016 (39 days late)
Activity: contributions = -0-; expenditures = \$1,619.00;
contributions maintained = -0-
Prior offenses: none
Penalty: \$500 – reduction to \$300 (II-A, Level 2); reverted to \$500 due to no response

Basis: Critical report; Category A filer; total contributions and expenditures are both under \$3,000 for the reporting period; no prior late-filing offenses in the last five years; no good cause shown.

- 2) Report: 8-day pre-election report due April 29, 2016
File date: May 13, 2016 (14 days late)
Activity: none
Prior offenses: 30-day pre-election report due April 7, 2016 (report (1) above)
Penalty: \$1,800 – reduction to \$500 (II-A, Level 3); reverted to \$1,800 due to no response

Basis: Critical report; Category A filer; total contributions and expenditures are both under \$3,000 for the reporting period; one prior late-filing offense in the last five years; no good cause shown.

- 3) Report: personal financial statement due May 2, 2016
File date: June 28, 2016 (57 days late)
Prior offenses: 30-day pre-election report due April 7, 2016 (report (1) above); and
8-day pre-election report due April 29, 2016 (report (2) above)
Penalty: \$500 – no waiver (II-A, Formulas Chart)

Basis: Critical report; Category A filer; two prior late-filing offenses in the last five years; no good cause shown.

Formula: The fine is calculated at \$500 (no good cause, 1st day late) + \$0 (remaining 56 days late) = \$500. (The maximum statutory late fine for this report is \$500.)

Total penalties: \$2,800 – reduced to \$1,300 total; reverted to \$2,800 total due to no response

On October 26, 2016, the Commission sent a determination letter informing Mr. Dawkins that he is eligible for a reduction of the total late-filing penalties to \$1,300 under the Ethics Commission Rules. The letter informed Mr. Dawkins that the reduced fine would revert to the original amount assessed if he did not remit the payment by November 28, 2016, or request appeal. The Commission received no response, so the fine reverted to \$2,800 total and was referred to the Attorney General for collection.

Request for Appeal: On January 25, 2017, the Commission received Mr. Dawkins's appeal in which he stated:

It's not my intention to ignore rules. This is a misunderstanding (on my part) of the process. Please accept my sincere apologies by dismissing all fines and fees levied against me in toto. Penalties are not affordable on my Social Security Disability income.

Mr. Dawkins explained that his candidacy's purpose was to help his community. No funds were raised and his few expenditures were made from personal funds. He further stated, "I have no means whatsoever to pay the fines being levied against me and have no vehicle to go anywhere to even attempt to gain additional funds to do so!"

TEC Rules Determination: II-B – Formulas Chart (Item 3):

**3. Thomas M. Manning (29533)
Treasurer, Republican Party of Ellis County, Local (CEC)**

Report: 8-day pre-election report due October 31, 2016
File date: November 9, 2016 (9 days late)
Activity: contributions = \$11,361.37; expenditures = \$11,771.26;
contributions maintained = \$7,864.06
Prior offenses: none
Penalty: \$1,300 – reduction to \$600

Basis: Critical report; Category B filer; total contributions and expenditures are both over \$3,000 for the reporting period; no prior late-filing offenses in the last five years; good cause shown.

Formula: The fine is calculated at \$100 (good cause, 0 priors, 1st day late) + \$500 (next 5 days late @ \$100 per day) + \$0 (remaining 3 days late do not add up to a full 30-day segment) = \$600.

On January 12, 2017, the Commission sent a determination letter informing Mr. Manning that he is eligible for a reduction of the late-filing penalty to \$600 under the Ethics Commission Rules. The letter requested that he remit the payment by February 13, 2017, or request appeal.

Request for Appeal: On February 10, 2017, the Commission received Mr. Manning's appeal. He stated that on the due date, while trying to electronically file the 8-day report due October 31, **2016**, he mistakenly clicked on the option to file a missing 8-day report due October 31, **1994**. As a result, the system automatically used 1994 dates to populate the period covered dates. Mr. Manning stated that, rather than typing in each transaction date, he used the pop-up monthly calendar provided on the entry screen to select dates. Coincidentally, the 1994 and 2016 calendar dates happen to fall on the same days of the week, so the month and day he selected for each transaction coincided with his 2016 event dates and he never noticed that all the dates entered were for 1994. Mr. Manning stated that Commission staff contacted him on November 9, 2016, regarding the issue and he immediately filed the report with the correct dates. The activity was exactly the same in both reports, except for the year. Mr. Manning respectfully requested that the fine be waived based on his substantial compliance and the electronic filing issues involving an old report.

Note: The new electronic filing system allows the Commission to show "Missing Reports" when a filer logs into the filing application. The filer has the option to start a specific missing report. If that specific report is selected, the system pre-populates the period covered. The intent is to help the filer more quickly realize when a deadline is missed and comply with the filing obligation. Once Commission staff identified that an unlimited look-back period for missing reports produced confusing results for current filers (missing reports from decades ago), the database query was adjusted. The system now looks back no more than five years for missing reports.

EXHIBIT A

TEXAS ETHICS COMMISSION WAIVER AND REDUCTION GUIDELINES: CORRECTED REPORTS

These guidelines do not apply to a correction filed or a fine imposed in the sworn complaint process under subchapter E or F of the Government Code or in a facial compliance review under section 571.069 of the Government Code.

By law, corrections to most reports are not considered late for purposes of a civil late-filing penalty if the correction includes an affidavit swearing that: 1) any error or omission in the report was made in good faith; and 2) the person files the correction not later than 14 business days after learning of the error.

Corrections to the following reports, however, are assessed a late fine and a waiver request must be considered by the Commission for:

- 1) 8-day pre-election reports;
- 2) Daily special pre-election reports; and
- 3) Correction to older reports (due before 9/1/07).

With respect to a late fine for a corrected report, the Commission may vote to:

- 1) Determine the report to be in substantial compliance;
- 2) Waive the fine;
- 3) Reduce the fine; or
- 4) Not waive the fine.

The Commission supports timely and accurate disclosure. While the emphasis is always on filing an accurate and complete report by the filing deadline, the Commission understands that unintentional errors may occur and encourages filers to correct errors. To ensure that similar corrections are handled in a fair and consistent manner, the Commission has issued the following guidelines for the staff to use in making recommendations to the Commission.

Substantial Compliance – The Commission will determine that a report substantially complied with the applicable law and grant a waiver of the late fine if the report meets the following criteria:

- 1) The person filed the original report in good faith and filed the corrected report not later than the 14th business day after the date the person learned of the errors or omissions; and

2) The only corrections needed were to correct the following types of errors or omissions:

- an obvious typographical error;
- an omission of information required for the Commission's administrative purposes (i.e., report deadline type, account number);
- a correction that is minor in context (i.e., a minor descriptive change with no change to monetary amounts, a change to the period covered dates resulting in no change to the activity disclosed);
- an error in disclosing contributions, if the amount of the incorrectly reported or unreported contributions does not exceed the lesser of 10% of the total contributions or \$10,000;
- an error in disclosing contributions, if the amount of the incorrectly reported or unreported contributions does not exceed \$2,000;
- an error in disclosing expenditures, if the amount of the incorrectly reported or unreported expenditures does not exceed the lesser of 10% of the total expenditures or \$10,000;
- an error in disclosing expenditures, if the amount of the incorrectly reported or unreported expenditures does not exceed \$2,000;
- an error in disclosing loans, if the amount of the incorrectly reported or unreported loans does not exceed the lesser of 10% of the total loans or \$10,000;
- an error in disclosing loans, if the amount of the incorrectly reported or unreported loans does not exceed \$2,000; or
- an error in the amount of total contributions maintained, if the correct amount does not vary by more than 10% from the amount originally disclosed.

Waiver – The Commission will determine that a corrected report is eligible for a waiver of the late fine in the following instances:

- The corrected 8-day pre-election report was filed not later than the fourth day after the original report due date.
- The only correction by a candidate/officeholder was to add an amount of loans made from personal funds to the outstanding loans total. (Technically,

political expenditures from personal funds that are disclosed as loans are not required to be included in the outstanding loans total.)

- The only correction by a committee was to add the names of candidates in the "Committee Activity" section on the cover sheet, when those names were originally disclosed on the appropriate expenditure schedule.
- The only correction to a daily special pre-election report was to correct a typographical error in the transaction date, which had caused the original report to appear late.
- The only correction was to disclose the actual amount of a contribution or expenditure, when: 1) the amount originally disclosed was an overestimation; 2) the difference did not vary by more than 10%; and 3) the original report clearly included an explanation of the estimated amount and the filer's intention to file a correction as soon as the actual amount is known.
- The corrected report shows other justifiable reasons warranting a waiver as determined by the Commission.

Reduction – The Commission will determine that a corrected report is eligible for a reduction of the late-filing penalty in the following instances:

- Reduce to \$500 – The corrected 8-day pre-election report was filed over four days after the original report due date but filed before the election.
- Reduce to \$1,000 – The corrected report was filed after the election and the amount of the incorrectly reported or unreported activity was over 10% of the total.
- Reduce to Amount of Original Late Fine – The corrected report by itself would be eligible for a waiver, but the original report was filed late.
- Reduce to 10% of the Amount at Issue – The amount of the incorrectly reported or unreported activity was over 40% of the total and the corrected report was filed over a year after the election.
- The corrected report shows other justifiable reasons warranting a reduction as determined by the Commission.

When the Commission reduces a late-filing penalty, the filer is notified and given 30 calendar days from the date of the notification letter to pay the reduced amount. If the payment is not submitted by the requested date, the fine reverts to the full penalty amount originally assessed and the matter is referred to the Comptroller and the Attorney General for collection.

No Waiver: The Commission will determine a corrected report is not eligible for a waiver of the late-filing penalty in the following instances:

- The correction to a daily special pre-election report added a contribution or expenditure not originally disclosed and the corrected report was filed after the election.
- The corrected report shows other justifiable reasons warranting no waiver as determined by the Commission.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: March 16, 2017
SUBJECT: Corrected Reports Memo
 Meeting Date: March 30, 2017

Substantial Compliance (Items 1-3)

1. Thresa A. 'Terry' Meza (69649)
Candidate, State Representative

Report: 8-day pre-election report due October 31, 2016
 Correction date: January 3, 2017
 Activity report #1: contributions = \$147,453.18; expenditures = \$26,329.85;
 contributions maintained = \$56,902.00
 Activity report #2: contributions = \$147,453.18; expenditures = \$26,355.67;
 contributions maintained = \$56,902.00
 Prior corrections: none
 Penalty: \$6,800

Ms. Meza corrected the original report to add two expenditures from personal funds totaling \$25.82. The total amount of the unreported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

2. Stanley J. 'Stan' Hartzler (56214)
Treasurer, 'CCRP' Caldwell County Republican Party (CEC)

Report: 8-day pre-election report due October 31, 2016
 Correction date: January 6, 2017
 Activity report #1: contributions = \$3,590.71; expenditures = \$5,440.97;
 contributions maintained = \$13,961.25
 Activity report #2: contributions = \$3,590.71; expenditures = \$5,872.78;
 contributions maintained = \$13,961.25
 Prior corrections: none
 Penalty: \$7,100

Mr. Hartzler corrected the original report to add six expenditures totaling \$431.81. The total amount of the unreported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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3. James D. 'Jim' Blume (69231) Treasurer, The Committee to Elect Judge Gena Slaughter

Report: 8-day pre-election report due October 31, 2016
Correction date: January 16, 2016
Activity report #1: contributions = \$13,000.00; expenditures = \$21,532.58;
contributions maintained = \$35,104.83
Activity report #2: contributions = \$13,000.00; expenditures = \$21,984.58;
contributions maintained = \$35,104.83
Prior corrections: none
Penalty: \$8,100

Mr. Blume corrected the original report to add two expenditures totaling \$452. The total amount of the unreported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Waiver (Item 4)

4. Denise Baker (16018) Treasurer, 'DowPAC' The Dow Chemical Company Employees PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: August 23, 2016
Activity report #1: contributions = \$39,473.68; expenditures = \$2,500.00;
contributions maintained = \$160,740.80
Activity report #2: contributions = \$39,473.68; expenditures = \$2,500.00;
contributions maintained = \$106,740.80
Prior corrections: none
Penalty: \$10,000

Ms. Baker corrected an inadvertent typographical error in the amount of total contributions maintained. She explained that when the balance was entered in the original report, two numbers (the 0 and 6) were accidentally transposed. Ms. Baker stated that she corrected the report as soon as the error was discovered. **Recommendation Based on Commission Guidelines: waiver.**

Reductions (Items 5-6)

**5. Leann K. Rafferty (80287)
District Judge**

Note: At the February 2017 meeting, this item was postponed at the filer's request.

Report: 8-day pre-election report due February 22, 2016
Correction date: June 28, 2016 (119 days after election date)
Activity report #1: contributions = \$15,700.00; expenditures = \$18,399.98;
contributions maintained = \$1,426.15; outstanding loans = -0-
Activity report #2: contributions = \$9,200.00; expenditures = \$18,399.98;
contributions maintained = \$1,426.15; outstanding loans = \$20,680.00
Prior corrections: none
Penalty: \$10,000

Judge Rafferty corrected the original report to accurately disclose a \$6,500 loan from herself on Schedule E (used for loans). The loan was originally disclosed as a contribution from Judge Rafferty on Schedule A1 (used for monetary political contributions). As a result of the correction, the total contributions decreased \$6,500. Judge Rafferty explained that after she learned her personal contributions to the campaign should be characterized as loans, she immediately contacted the Commission's legal staff for assistance in correcting the report. Judge Rafferty also corrected the report to add \$20,680 in outstanding loans, all of which were loans to herself. (Technically, political expenditures made from personal funds that are reported as loans are not required to be included in the outstanding loans total.) The amount of the change in contributions is over 50% of the total. The correction was filed approximately four months after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

Corrected Reports Memo

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6. John Halloran Romanow (16232) Treasurer, 'TAS-PAC' Texas Assn. Of Staffing PAC

Note: The filer filed two corrections to the report at issue.

- 1) Report: 8-day pre-election report due October 31, 2016
Correction date: January 9, 2017
Activity report #1: contributions = -0-; expenditures = -0-;
contributions maintained = \$7,163.56
Activity report #2: contributions = \$4,020.00; expenditures = \$11,055.00;
contributions maintained = \$7,163.56
Prior corrections: none
Penalty: \$7,400

- 2) Report: 8-day pre-election report due October 31, 2016
Correction date: February 9, 2017
Activity report #2: contributions = \$4,020.00; expenditures = \$11,055.00;
contributions maintained = \$7,163.56
Activity report #3: contributions = \$470.00; expenditures = \$9,500.00;
contributions maintained = \$7,163.56

On October 28, 2016, Mr. Romanow filed the original 8-day report covering 07/01/2016 – 10/29/2016 (no 30-day pre-election report was filed). The original 8-day report disclosed no activity except the amount of total contributions maintained.

On January 9, 2017, Mr. Romanow corrected the original report to add \$4,020 total contributions and \$11,282.42 in expenditures. He stated that he mistakenly thought that he would report the activity on the January semiannual report. He stated that while speaking with the Commission's help desk, he learned that he was required to disclose the PAC's reportable activity that occurred in the reporting period, including all election-related activity, on the 8-day pre-election report.

In February 2017, while reviewing the first correction Commission staff found that some of the activity actually occurred in the 30-day reporting period, and therefore a 30-day pre-election report was required. On February 8, 2017, Commission technical support staff contacted Mr. Romanow to assist him in filing another correction to the 8-day report in order to file the missing 30-day report. (The late fine for the 30-day pre-election report is being handled separately under the Commission's administrative waiver and reduction rules.) On February 9, 2017, Mr. Romanow filed the second correction to correct the period covered start date for the 8-day report and to remove the 30-day activity (eight contributions totaling \$3,550, and three expenditures totaling \$1,555).

Commission records show that this is not Mr. Romanow's first time to file pre-election reports. The first correction was filed two months after the general election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

Texas Ethics Commission
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Ian M. Steusloff, General Counsel
DATE: March 16, 2017
SUBJECT: Termination of Campaign Treasurer Appointments

CANDIDATE

1. Michael Alan Dougan (00060199)

Last report filed: Has never filed a report
Treasurer appointment filed: November 20, 2015
Office sought: Governor

2. Beverly Watts Davis (00080262)

Last report filed: Has never filed a report
Treasurer appointment filed: October 15, 2015
Office sought: State Representative, District 120

3. Mari Aguirre-Rodriguez (00080441)

Last report filed: Has never filed a report
Treasurer appointment filed: December 11, 2015
Office sought: State Representative, District 116

POLITICAL COMMITTEES

4. KEY PAC (00065246)
Jein Gadson, Treasurer

Last report filed: July 15, 2015
Treasurer appointment filed: January 31, 2014

5. New Leaders Texas PAC (00067438)
Jared G. LeBlanc, Treasurer

Last report filed: Has never filed a report
Treasurer appointment filed: July 16, 2015

**6. Midland County Texas Democratic Women (00070088)
Virginia White, Treasurer**

Last report filed: July 15, 2015
Treasurer appointment filed: March 27, 2014

**7. American Protection Specialists - PAC (00070311)
Lydia B. Garza, Treasurer**

Last report filed: July 14, 2015
Treasurer appointment filed: March 17, 2015

**8. Politics HUB (00080098)
Brandy J. Dougan, Treasurer**

Last report filed: Has never filed a report
Treasurer appointment filed: July 16, 2015

**9. Poker in Texas (00080136)
Corey W. Nation, Treasurer**

Last report filed: Has never filed a report
Treasurer appointment filed: August 5, 2015