

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

Steven D Wolens, Chair
Hugh C. Akin, Vice Chair
Jim Clancy
Chad M. Craycraft

Chris Flood
Mary K. "Katie" Kennedy
Tom Ramsay
Chase Untermeyer

WORKSHOP AGENDA

Date and Time: 10:30 a.m., Wednesday, September 27, 2017
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.

RULEMAKING

2. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.5 (Deadline for Filing a Complaint), regarding the Commission's jurisdiction to accept a complaint allegation.
3. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.21 (Notice), regarding requirements for the Commission to send hearing notices to a respondent.
4. Public discussion and possible action on the proposal and publication in the Texas Register of Ethics Commission Rules § 12.36 (Assessment of Civil Penalty) and a repeal of Ethics Commission Rules § 18.27 (Sworn Complaints), clarifying the facts that the Commission will consider when assessing a civil penalty in the complaint process.
5. Public discussion and possible action on the proposal and publication in the Texas Register of Ethics Commission Rules § 12.37 (Dismissal of Complaint After Public Disclosure), regarding the Commission's authority to dismiss a complaint filed by a complainant who publicly discloses confidential information regarding the complaint.
6. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.83 (Preliminary Review), regarding procedures for written questions sent to a respondent and procedures for preliminary review of a complaint.

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

7. Public discussion and possible action on the proposal and publication in the Texas Register of amendments to Ethics Commission Rules § 12.85 (Preliminary Review Hearing) and § 12.87 (Resolution of Preliminary Review Hearing), regarding procedures for preliminary review hearings.
8. General discussion of rules regarding confidentiality of sworn complaints and waiver of confidentiality, including Ethics Commission Rules § 12.7 (Confidentiality), and communications regarding sworn complaints between members of the Commission and Commission staff.

WORKSHOP ON PROPOSED RULES GOVERNING FORMAL HEARINGS

9. Briefing, discussion, and possible action on proposed rules governing the Formal Hearing process.
10. 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.

Exhibit A

Statute of Limitations

Text of Proposed Rule

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

Chapter 12. SWORN COMPLAINTS
Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§ 12.5. Deadline for Filing a Complaint

(a) For an alleged violation that occurs before January 1, 2018, the [~~The~~] commission has no jurisdiction over the 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 an alleged violation that occurs on or after January 1, 2018, the commission has no jurisdiction if the alleged violation occurred more than four years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(c) [~~(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.

(d) [~~(e)~~] For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

Exchange of Documents and Witness Lists

Text of Proposed Rule

The proposed new language is indicated by underlined text.

The deleted text is indicated by [~~strikethrough~~] text.

Chapter 12. SWORN COMPLAINTS
Subchapter A. GENERAL PROVISIONS AND PROCEDURES**§ 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) The commission shall provide notice [~~Notice~~] of a hearing to a respondent that must be received [~~given~~] at least 30/40/50/60 (?) [~~10-business~~] days before the date of the hearing [~~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) either a short and plain statement of the factual matters asserted or a copy of the complaint with additional attachments that include the factual matters asserted;
[-]

(5) a list of proposed witnesses to be called at the hearing;

(6) copies of all documents expected to be used or introduced as exhibits at the hearing; and

(7) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(d) The respondent shall provide to the commission the contents described by paragraphs (c)(5), (c)(6), and (c)(7) of this section and the contents must be received at least

Exhibit A

Exchange of Documents and Witness Lists

10/15/21/30 (?) days before the date of the hearing. A respondent's failure to comply with this section may, at the discretion of the presiding officer/commission (?), result in the exclusion of evidence, documents, and testimony provided by the respondent at the hearing, but may be excused upon a showing of good cause.

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

(f) [~~(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.

Civil Penalties

Text of Proposed Rule

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

Chapter 12. SWORN COMPLAINTS
Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§ 12.36. Assessment of Civil Penalty.

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

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

(c) The commission is not required to waive the fine for a respondent who files a late or corrected report or makes a corrective action, but may consider the report or action to be a mitigating factor in determining the amount of any fine.

Chapter 18. GENERAL RULES CONCERNING REPORTS

[§ 18.27. Sworn Complaints.

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

(b) The commission is not required to waive the fine for a respondent who files a corrected report but may consider the correction to be a mitigating factor in determining the amount of any fine.]

EXHIBIT A

Dismissal of Complaint After Public Disclosure

Text of Proposed Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS
Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§ 12.37. Dismissal of Complaint After Public Disclosure.

If a complainant publicly discloses confidential information about a sworn complaint filed or to be filed by the complainant, the commission may dismiss the complaint. Dismissal of a complaint under this section does not prohibit an individual other than the complainant from filing a sworn complaint or prohibit the commission from voting to initiate a preliminary review of a matter.

Written Questions

Text of Proposed Rule

The proposed new language is indicated by underlined text.

The deleted text is indicated by ~~[strikethrough]~~ text.

Chapter 12. SWORN COMPLAINTS**Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW****§ 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 30 ~~[15 business]~~ days after the respondent receives the written questions. Written questions shall include interrogatories, requests for admissions, and requests for documents. The executive director may grant an extension of the time period for good cause shown.

(b) A response to interrogatories shall be consistent with Rule 197.2 of the Texas Rules of Civil Procedure. A response to requests for admissions shall be consistent with Rule 198.2 of the Texas Rules of Civil Procedure. A respondent may make an objection or assert a privilege in response to written questions in accordance with Rules 193.2 or 193.3 of the Texas Rules of Civil Procedure, as applicable.

(c) If a respondent does not timely respond to written questions as required by this section, the presiding officer/commission (?), at the request of the commission staff, may issue an order imposing sanctions on the respondent (after notice and opportunity for hearing?). An evasive or incomplete answer or objection is treated as a failure to timely respond. Sanctions may include:

- (1) deeming designated facts be admitted for purposes of the proceeding;
- (2) refusing to allow the respondent to support or oppose a claim or defense or prohibiting the respondent from introducing designated matters into the record; or
- (3) striking pleadings or testimony.

(d) [(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 (b)(2) [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.

Exhibit A

Written Questions

(e) [~~(e)~~] 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 (b)(2) [~~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.

(f) [~~(d)~~] The executive director and commission staff shall [~~may~~] report to the commission any status, findings, [and] conclusions, and resolutions regarding [~~from~~] a preliminary review of a complaint, including responses to written questions and subpoenas.

EXHIBIT B

Texas Rules of Civil Procedure

RULE 197. INTERROGATORIES TO PARTIES

197.1 Interrogatories.

A party may serve on another party - no later than 30 days before the end of the discovery period -written interrogatories to inquire about any matter within the scope of discovery except matters covered by Rule 195. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of its available proof or the proof the party intends to offer at trial.

197.2 Response to Interrogatories.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the interrogatories, except that a defendant served with interrogatories before the defendant's answer is due need not respond until 50 days after service of the interrogatories.

(b) **Content of response.** A response must include the party's answers to the interrogatories and may include objections and assertions of privilege as required under these rules.

(c) **Option to produce records.** If the answer to an interrogatory may be derived or ascertained from public records, from the responding party's business records, or from a compilation, abstract or summary of the responding party's business records, and the burden of deriving or ascertaining the answer is substantially the same for the requesting party as for the responding party, the responding party may answer the interrogatory by specifying and, if applicable, producing the records or compilation, abstract or summary of the records. The records from which the answer may be derived or ascertained must be specified in sufficient detail to permit the requesting party to locate and identify them as readily as can the responding party. If the responding party has specified business records, the responding party must state a reasonable time and place for examination of the documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them.

(d) **Verification required; exceptions.** A responding party - not an agent or attorney as otherwise permitted by Rule 14 - must sign the answers under oath except that:

- (1) when answers are based on information obtained from other persons, the party may so state, and

EXHIBIT B

(2) a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions.

197.3 Use.

Answers to interrogatories may be used only against the responding party. An answer to an interrogatory inquiring about matters described in Rule 194.2(c) and (d) that has been amended or supplemented is not admissible and may not be used for impeachment.

RULE 198. REQUESTS FOR ADMISSIONS

198.1 Request for Admissions.

A party may serve on another party - no later than 30 days before the end of the discovery period - written requests that the other party admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying. Each matter for which an admission is requested must be stated separately.

198.2 Response to Requests for Admissions.

(a) **Time for response.** The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a defendant served with a request before the defendant's answer is due need not respond until 50 days after service of the request.

(b) **Content of response.** Unless the responding party states an objection or asserts a privilege, the responding party must specifically admit or deny the request or explain in detail the reasons that the responding party cannot admit or deny the request. A response must fairly meet the substance of the request. The responding party may qualify an answer, or deny a request in part, only when good faith requires. Lack of information or knowledge is not a proper response unless the responding party states that a reasonable inquiry was made but that the information known or easily obtainable is insufficient to enable the responding party to admit or deny. An assertion that the request presents an issue for trial is not a proper response.

(c) **Effect of failure to respond.** If a response is not timely served, the request is considered admitted without the necessity of a court order.

198.3 Effect of Admissions; Withdrawal or Amendment.

Any admission made by a party under this rule may be used solely in the pending action and not in any other proceeding. A matter admitted under this rule is conclusively

EXHIBIT B

established as to the party making the admission unless the court permits the party to withdraw or amend the admission. The court may permit the party to withdraw or amend the admission if:

- (a) the party shows good cause for the withdrawal or amendment; and
- (b) the court finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.

Exhibit A

Prelim Rev Hearing Resolution

Text of Proposed Rule

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

Chapter 12. SWORN COMPLAINTS
Subchapter C. Investigation and Preliminary Review

12.85. Preliminary Review Hearing.

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

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

§ 12.87. Resolution of Preliminary Review Hearing.

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

(1) commission staff shall send to the respondent a proposed resolution within 10 days; and

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

(A) the proposed resolution signed (and approved ?) by the respondent;

(B) a written counter offer; or

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

Exhibit A

Prelim Rev Hearing Resolution

(b) If the respondent does not comply with paragraph (a)(2), commission staff may request that the commission order a formal hearing.

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

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

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

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

(e) The executive director shall dismiss a complaint if the commission does not order a formal hearing [~~fails to issue a decision under section 571.126 of the Government Code~~] within 180 days after the conclusion of a preliminary review hearing.

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

EXHIBIT B

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE B. ETHICS

CHAPTER 571. TEXAS ETHICS COMMISSION

SUBCHAPTER E. COMPLAINT PROCEDURES AND HEARINGS

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.

EXHIBIT A

Chapter 12. SWORN COMPLAINTS
Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§ 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.

TEXAS GOVERNMENT CODE, CHAPTER 571

Sec. 571.140. Confidentiality; Offense

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the commission after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(b-1) A commission employee may, for the purpose of investigating a sworn complaint or motion, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

- (1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;
- (2) the employee's determination under Subdivision (1) is objectively reasonable;
- (3) the executive director authorizes the disclosure; and

EXHIBIT A

(4) the employee discloses only the information necessary to conduct the investigation.

(c) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class C misdemeanor.

(d) In addition to other penalties, a person who discloses information made confidential by this section is civilly liable to the respondent in an amount equal to the greater of \$10,000 or the amount of actual damages incurred by the respondent, including court costs and attorney fees.

(e) The commission shall terminate the employment of a commission employee who violates Subsection (a).

(f) A commission employee who discloses confidential information in compliance with Subsection (b-1) is not subject to Subsections (c), (d), and (e).

TEXAS ETHICS COMMISSION
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Tom Ramsay
Chase Untermeyer

AGENDA

Date and Time: 8:30 a.m., Thursday, September 28, 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. D-1-GN-17-001878, *Michael Quinn Sullivan v. Texas Ethics Commission, by and through its executive director, Natalia Luna Ashley, in her official capacity*, in the 250th Judicial District Court in Travis County, Texas; and Cause No. 03-17-00392-CV, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, 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

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

the 53rd Judicial District Court of Travis County, Texas; and related case, Cause 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:	9:00 a.m., Thursday, September 28, 2017
Location:	Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Comments by the Commissioners.
3. Comments by the Executive Director.
4. Approve minutes for the following meetings:
 - Executive Session – July 11, 2017;
 - Public Meeting – July 11, 2017; and
 - Workshop Meeting – July 12, 2017

RULEMAKING

5. 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 § 20.1 (Definitions) and § 20.61 (Purpose of Expenditure), and new Ethics Commission Rules § 20.56 (Expenditures to Vendors).
6. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.61 (Purpose of Expenditure), regarding the disclosure of political expenditures made in the form of in-kind contributions to candidates, officeholders, and political committees.

ADVISORY OPINIONS

7. Discussion of Advisory Opinion Request No. AOR-622: Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services.

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

This opinion request construes Section 572.069 of the Government Code.

OTHER POLICY MATTERS

8. Discussion regarding commissioner travel reimbursement.
9. Discussion regarding surveys to determine level of local filer compliance, including Form 1295 compliance.
10. Public discussion regarding an amendment to Form 1295, Disclosure of Interested Parties, in accordance with Senate Bill 255, 85th Legislative Session, 2017.
11. Discussion regarding filer ability to perform “error check” in campaign finance reporting application.
12. Briefing, discussion, and possible action on appeal of fines increased by the Commission, and 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 individual and political committees:
 1. James D. Morrison (00080120)
 2. Richard Knight, Jr., Treasurer, ‘DCUA’ Dallas Committee on Urban Affairs (00039199)
 3. Adnan Tovar, Treasurer, ‘ROCKGPAC’ Rockwall Republican Executive Committee General Purpose PAC (CEC) (00056027)
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:
 1. Arcelia Trevino (00080582)
 2. Andrea B. ‘Andi’ St. Leger (00080267)
14. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive individuals and political committees:

Individuals

1. Deborah B. Shafto (00066498)
2. Lee C. Crisp (00068211)
3. Anthony Alcoser (00080169)
4. David Wylie (00080102)

5. John T. Floyd III (00080478)

Political Committees

6. Veronica F. Thibideaux, Treasurer, Alief Federation of Teachers Committee on Political Education (00063388)
 7. Michael Gibson, Treasurer, Three Amigos (00070179)
 8. Christine A. Jager, Treasurer, Citizens for Judicial Reform (00080697)
 9. Derrick Osobase, Treasurer, Texas Working People CWA Political Action Committee (80730)
 10. Wyatt Truscheit, Treasurer, Friends of Charters (00080868)
15. Report more than 30 days late: Discussion and possible action regarding the imposition of an additional fine on the following filer:

Lobbyist

Zachary Male (00070517)

16. Discussion and possible action on the approval of a format for electronic filing of campaign finance reports, as proposed by Bastrop County and Navarro County.
17. Communication to the Commission from the public.
18. 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 will be available on our website the day before the meeting, at <https://www.ethics.state.tx.us/DraftMinutes>.

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

Email address:

EXHIBIT A

Text of Proposed Rules

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

**Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND
EXPENDITURES**

Subchapter B. GENERAL REPORTING RULES

§20.1. Definitions.

(24) Vendor—Any person providing goods or services to a candidate, officeholder, political committee, or other filer under this chapter. The term does not include an employee of the candidate, officeholder, political committee, or other filer.

§20.56. Expenditures to Vendors.

(a) A political expenditure made by a vendor for a candidate, officeholder, political committee, or other filer, with the intent to seek reimbursement from the filer, shall be reported by the filer in accordance with this chapter as though the filer made the expenditure directly.

(b) A vendor of a candidate, officeholder, or specific-purpose committee may not, in providing goods or services for the candidate, officeholder, or committee, make an expenditure that, if made by the candidate, officeholder, or committee, would be prohibited by Sections 253.035, 253.038, or 253.041, Election Code.

(c) A candidate, officeholder, or specific-purpose committee may not use political contributions to pay or reimburse a vendor for an expenditure that, if made by the candidate, officeholder, or committee, would be prohibited by Sections 253.035, 253.038, or 253.041, Election Code.

§20.61. Purpose of Expenditure.

(a) For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

...

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or

EXHIBIT A

description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(3) For purposes of this section, “consulting” means advice and strategy. “Consulting” does not include providing other goods or services, including without limitation media production, voter contact, or political advertising.

(b) An expenditure other than a reimbursement to a person, including a vendor, for more than one type of good or service must be reported by the filer as separate expenditures for each type of good or service provided by the person in accordance with this rule.

(c) [(b)] The description of a political expenditure for travel outside of the state of Texas must provide the following:

...

(d) [(e)] Except as provided by subsection (e) [(d)] of this section, this rule applies to expenditures made on or after July 1, 2010.

(e) [(d)] The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(f) [(e)] Comments: ...

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 20. REPORTING POLITICAL CONTRIBUTIONS AND
EXPENDITURES**

Subchapter B. GENERAL REPORTING RULES

§20.61. Purpose of Expenditure.

(a) For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

- (A) advertising expense;
- (B) accounting/banking;
- (C) consulting expense;
- (D) contributions/donations made by candidate/officeholder/political committee;
- (E) event expense;
- (F) fees;
- (G) food/beverage expense;
- (H) gifts/awards/memorials expense;
- (I) legal services;
- (J) loan repayment/reimbursement;
- (K) office overhead/rental expense;
- (L) polling expense;

- (M) printing expense;
- (N) salaries/wages/contract labor;
- (O) solicitation/fundraising expense;
- (P) transportation equipment and related expense;
- (Q) travel in district;
- (R) travel out of district;
- (S) other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
- (2) The means of transportation;
- (3) The name of the departure city or the name of each departure location;
- (4) The name of the destination city or the name of each destination location;
- (5) The dates on which the travel occurred; and
- (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(X) The description of a political expenditure made as an in-kind contribution to a candidate, officeholder, or political committee must provide the following:

- (1) the name of the candidate, officeholder, or political committee accepting the in-kind contribution; and

(2) if accepted by a candidate or officeholder, the office sought or office held by the candidate or officeholder.

~~[(e) Except as provided by subsection (d) of this section, this rule applies to expenditures made on or after July 1, 2010.]~~

~~[(d) The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.]~~

(e) Comments:

The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made.

The following is a list of examples that describe how the purpose of an expenditure may be reported under section 20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

...

(22) Example: Candidate X is seeking the office of State Representative, District 2000. Political Committee Y, with the prior consent or approval of Candidate X, contracts with a newspaper to publish political advertising supporting Candidate X. The acceptable category for the expenditure made by Political Committee Y is “advertising expense” and an acceptable brief description is “in-kind contribution to support Candidate X for State Representative, District 2000.”

DRAFT

ETHICS ADVISORY OPINION NO. ____

September 28, 2017

Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services. (AOR-622)

The Texas Ethics Commission has been asked whether the “revolving door” law in section 572.069 of the Government Code would prohibit the requestor of this opinion, who is a state employee (“the requestor”), from departing the state agency where the requestor is currently employed and providing certain services to two for-profit businesses (“clients”).

The requestor states that the state agency published a request for proposals (“RFP”), seeking a vendor to provide information technology services. The requestor reviewed and scored the bid proposals submitted in response to the RFP. The first of the two clients submitted a proposal, in which the second client was listed as a subcontractor. The requestor states that the requestor did not participate any further in the RFP or participate in negotiation with vendors or the vendor selection. The requestor also states that the requestor would provide the services as a “consultant” employed by a staffing agency and assigned to the clients. In addition, the requestor states that the services would be in furtherance of the executed state agency contract for which the requestor reviewed and scored bid proposals.

Revolving Door Law

Section 572.069 of the Government Code states:

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

Gov't Code § 572.069.¹

¹ In the 2017 regular legislative session, the Legislature amended this section to prohibit a former state officer or employee of a state agency who, during the period of state service or employment, participated on behalf of a state agency in a procurement or contract negotiation involving a person, from accepting employment from that person before the second anniversary of the date the “contract is signed or the procurement is terminated or withdrawn.” S.B. 533, Act of May 30, 2017, 85th Leg., R.S., § 1 (eff. September 1, 2017) (emphasis added). We address the requestor’s facts under the current law.

DRAFT

Participation and Involvement

The first question is whether the requestor participated on behalf of a state agency² in a procurement or contract negotiation involving the clients. In our opinion, the requestor participated in a procurement on behalf of a state agency by scoring and evaluating bid proposals for a state agency contract. Further, the procurement involved both clients because they were identified in the proposal as providing services under the contract. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting employment from either client before the second anniversary of the date the employee's employment with the state agency ceases.

Accepting Employment

The second question is whether the requestor would "accept employment" from either client by providing the services at issue, which depends upon the specific circumstances surrounding the requestor's working arrangement with the staffing agency and the two clients. The facts indicate the following:

- The staffing agency would consider the requestor its employee, pay the requestor's salary, and provide for workplace benefits;
- The staffing agency would assign the requestor to work for the clients on a "consultant basis;"
- The requestor would provide services for the clients in furtherance of the clients' obligations under the state agency contract;
- The length of the requestor's employment with the staffing agency would be contingent on the duration of the state agency contract and could be modified by the clients;
- The requestor would retain the right to terminate employment before completion of the contract without liability for its completion;
- The clients would give the requestor instructions concerning when, where, and how the work would be performed;
- The clients would provide the requestor with training as needed;
- The clients would furnish the requestor with a computer;
- The clients and staffing agency would jointly control the requestor's schedule; and
- All hours worked and paid would require the approval of both the clients and staffing agency.

When a statute uses the terms "employee" or "employed," or otherwise refers to an "employment" relationship, courts will use the common law test of employment unless the

² We assume for purposes of this opinion that the agency is a "state agency" as defined by section 572.002(10) of the Government Code.

DRAFT

statute dictates otherwise.³ Chapter 572 of the Government Code does not define the term “employment” or indicate that the Legislature intended the term “employment” in section 572.069 to be interpreted differently from how that term is understood in the common law. Therefore, we will in this case use the common law test of employment to determine whether a prohibited employment relationship would exist.

Under the common law test, generally, an individual renders services as an employee of an employer if:

- (1) The individual acts, at least in part, to serve the interests of the employer;
- (2) The employer consents to receive the individual’s services; and
- (3) The employer controls the manner and means by which the individual renders services, or the employer otherwise effectively prevents the individual from rendering those services as an independent businessperson.⁴

Under the “right to control” test,⁵ an employer’s right or ability to control the manner and means by which an individual renders services is sufficient to establish an employment relationship.⁶

In our opinion, based on the facts presented, the requestor would be acting to serve the interests of the clients, who would be consenting to receive the services. The clients would also have the right or ability to control the manner and means by which the requestor would render the services. Thus, an employment relationship would exist between the requestor and the clients. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting the described employment arrangement before the second anniversary of the date on which the requestor’s service or employment with the state agency ceases.

SUMMARY

Under the facts described, section 572.069 of the Government Code prohibits a former state employee from providing certain services before the second anniversary of the date on which the employee’s service or employment with the state agency ceases.

³ See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992). See also *Kelley v. Southern Pacific Co.*, 419 U.S. 318, 323-24 (1974); Attorney General Opinion Nos. GA-0292, at 3-4 (2005) (GA-0292) (applying common law test to determine meaning of “employed by” in statute), DM-409, at 4-5 (1996) (DM-409) (applying common law test to define “employee” in indemnification statute).

⁴ Restatement (Third) of Employment Law: Conditions for Existence of Employment Relationship § 1.01(a) (2015).

⁵ See GA-0292, at 4 (test to determine whether a person is an employee rather than independent contractor is whether the employer has a right to control the progress, details, and methods of operations of the work); DM-409, at 5 (1996) (considering whether employer has right to control details of work). See also Comment *d* to Restatement (Third) of Employment Law § 1.01.

⁶ An individual may also be the employee of more than one employer. *St. Joseph Hosp. v. Wolff*, 94 S.W. 3d 513, 538 (Tex. 2002). An individual is an employee of two or more joint employers if: (i) the individual renders services to at least one of the employers and (ii) that employer and the other joint employers each control or supervise such rendering of services. Restatement (Third) of Employment Law: Employees of Two or More Employers § 1.04(b) (2015).

DRAFT
(July 2017)

ETHICS ADVISORY OPINION NO. ____

July 11, 2017

Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services. (AOR-622)

The Texas Ethics Commission has been asked whether the “revolving door” law in section 572.069 of the Government Code would prohibit the requestor of this opinion, who is a state employee (“the requestor”), from departing the state agency where the requestor is currently employed and providing certain services to two for-profit businesses (“clients”).

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Gov't Code § 572.069.¹

¹ In the 2017 regular legislative session, the Legislature amended this section to prohibit a former state officer or employee of a state agency who, during the period of state service or employment, participated on behalf of a state agency in a procurement or contract negotiation involving a person, from accepting employment from that person before the second anniversary of the date the “contract is signed or the procurement is terminated or withdrawn.” S.B. 533, Act of May 30, 2017, 85th Leg., R.S., § 1 (eff. September 1, 2017) (emphasis added). We address the requestor's facts under the current law.

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The first question is whether the requestor participated on behalf of a state agency in a procurement or contract negotiation involving the clients. In our opinion, the requestor participated in a procurement by scoring and evaluating bid proposals for a state agency contract. Further, the procurement involved both clients because they were identified in the proposal as providing services under the contract. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting employment from either client before the second anniversary of the date the employee's employment with the state agency ceases.

Accepting Employment

The second question is whether the requestor would "accept employment" from either client by providing the services at issue, which depends upon the specific circumstances surrounding the requestor's working arrangement with the staffing agency and the two clients. The facts indicate the following:

- The staffing agency would consider the requestor its employee, pay the requestor's salary, and provide for workplace benefits;
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- The clients would provide the requestor with training as needed;
- The clients would furnish the requestor with a computer;
- The clients and staffing agency would jointly control the requestor's schedule; and
- All hours worked and paid would require the approval of both the clients and staffing agency.

When a statute uses the terms "employee" or "employed," or otherwise refers to an "employment" relationship, courts will use the common law test of employment unless the statute dictates otherwise.² Chapter 572 of the Government Code does not define the term

² See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992). See also *Kelley v. Southern Pacific Co.*, 419 U.S. 318, 323-24 (1974); Attorney General Opinion Nos. GA-0292, at 3-4 (2005) (GA-0292) (applying common law test to determine meaning of "employed by" in statute), DM-409, at 4-5 (1996) (DM-409) (applying common law test to define "employee" in indemnification statute).

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“employment” or indicate that the Legislature intended the term “employment” in section 572.069 to be interpreted differently from how that term is understood in the common law. Therefore, we will in this case use the common law test of employment to determine whether a prohibited employment relationship would exist.

Under the common law test, generally, an individual renders services as an employee of an employer if:

- (1) The individual acts, at least in part, to serve the interests of the employer;
- (2) The employer consents to receive the individual’s services; and
- (3) The employer controls the manner and means by which the individual renders services, or the employer otherwise effectively prevents the individual from rendering those services as an independent businessperson.³

Under the “right to control” test,⁴ an employer’s right or ability to control the manner and means by which an individual renders services is sufficient to establish an employment relationship.⁵

In our opinion, based on the facts presented, the requestor would be acting to serve the interests of the clients, who would be consenting to receive the services. The clients would also have the right or ability to control the manner and means by which the requestor would render the services. Thus, an employment relationship would exist between the requestor and the clients. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting the described employment arrangement before the second anniversary of the date on which the requestor’s service or employment with the state agency ceases.

SUMMARY

Under the facts described, section 572.069 of the Government Code prohibits a former state employee from providing certain services before the second anniversary of the date on which the employee’s service or employment with the state agency ceases.

³ Restatement (Third) of Employment Law: Conditions for Existence of Employment Relationship § 1.01(a) (2015).

⁴ See GA-0292, at 4 (test to determine whether a person is an employee rather than independent contractor is whether the employer has a right to control the progress, details, and methods of operations of the work); DM-409, at 5 (1996) (considering whether employer has right to control details of work). See also Comment *d* to Restatement (Third) of Employment Law § 1.01.

⁵ An individual may also be the employee of more than one employer. *St. Joseph Hosp. v. Wolff*, 94 S.W. 3d 513, 538 (Tex. 2002). An individual is an employee of two or more joint employers if: (i) the individual renders services to at least one of the employers and (ii) that employer and the other joint employers each control or supervise such rendering of services as provided in § 1.01(a)(3). Restatement (Third) of Employment Law: Employees of Two or More Employers § 1.04(b) (2015).

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO person with a controlling interest in the business entity AND there is NO intermediary in the contract.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
 (month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

S.B. No. 255

AN ACT

relating to contracts with and training for governmental entities and vendors, including purchasing and contract management training; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 656.047, Government Code, is amended by adding Subsection (c) to read as follows:

(c) A state agency that spends more than \$5,000 in a state fiscal year for a training or education program for any individual administrator or employee shall, not later than August 31 of that year, submit to the Legislative Budget Board a report including:

(1) a list of the administrators and employees participating in a training or education program;

(2) the amount spent on each administrator or employee;

and

(3) the certification earned by each administrator or employee through the training or education program.

SECTION 2. Subchapter C, Chapter 656, Government Code, is amended by adding Sections 656.054 and 656.055 to read as follows:

Sec. 656.054. PURCHASING AND CONTRACT MANAGEMENT TRAINING BY COMPTROLLER. (a) The comptroller shall develop training programs provided by the comptroller under this subchapter to meet the needs

additional resources that may be necessary to meet future needs;

(5) an analysis of expected changes in the services provided by the agency because of changes in state or federal law;

(6) a description of the means and strategies for meeting the agency's needs, including future needs, and achieving the goals established under Section 2056.006 for each area of state government for which the agency provides services;

(7) a description of the capital improvement needs of the agency during the term of the plan and a statement, if appropriate, of the priority of those needs;

(8) identification of each geographic region of this state, including the Texas-Louisiana border region and the Texas-Mexico border region, served by the agency, and if appropriate the agency's means and strategies for serving each region;

(9) a description of the training of the agency's contract managers under Section 656.052 [~~2262-053~~];

(10) an analysis of the agency's expected expenditures that relate to federally owned or operated military installations or facilities, or communities where a federally owned or operated military installation or facility is located;

(11) an analysis of the strategic use of information resources as provided by the instructions prepared under Section 2054.095; and

(12) other information that may be required.

SECTION 5. Sections 2252.908(c) and (e), Government Code, are amended to read as follows:

(c) Notwithstanding Subsection (b), this section does not apply to:

(1) a sponsored research contract of an institution of higher education;

(2) an interagency contract of a state agency or an institution of higher education; ~~[or]~~

(3) a contract related to health and human services if:

(A) the value of the contract cannot be determined at the time the contract is executed; and

(B) any qualified vendor is eligible for the contract;

(4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity;

(5) a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code; or

(6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.

(e) The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes:

(1) a list of each interested party for the contract of which the contracting business entity is aware; and

(2) a written, unsworn declaration subscribed by ~~the signature of~~ the authorized agent of the contracting business entity as true; ~~acknowledging that the disclosure is made under oath and~~ under penalty of perjury that is in substantially the following form:

"My name is _____,

my

date of birth is _____, and my address

is

_____, _____, _____,

_____.

(Street) (City) (State) (Zip Code)

_____. I declare under penalty of

(Country)

perjury that the foregoing is true and correct.

Executed in _____ County, State of _____,

on the _____ day of _____.

(Month) (Year)

Declarant".

SECTION 6. Section 2262.101(a), Government Code, is amended to read as follows:

(a) The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) reviewing and making recommendations on the solicitation documents and contract documents for contracts of state agencies that have a value of at least \$10 million;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide;



MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Ian Steusloff, General Counsel

DATE: September 14, 2017

SUBJECT: Update on the Implementation of Waiver and Reduction Rules

The rules allowing the executive director to determine whether or not a filer is eligible for a waiver or reduction of a fine for a late report continue to work well. With these rules, determinations regarding most waiver requests are handled administratively. Since the last meeting, staff has processed 58 waiver requests under TEC Rules 18.24-26 and made the following determinations:

Waiver =	23
Reduction =	20
No Waiver =	<u>15</u>
Total =	58

Under the rules, a filer who disagrees with the administrative determination may appeal to the Commission. Appeals are considered by the Commission during a public meeting, and filers have an opportunity to appear to offer testimony. At the September meeting, the Commission will consider three such appeals, which are listed in the attached memorandum (Exhibit A). At the meeting, the Commission may vote to affirm the original determination or make a new determination based on facts presented.

Please let me know if you have any questions.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: September 14, 2017
SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)
Meeting Date: September 28, 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 II: CRITICAL REPORTS

TEC Rules Determination: II-A – Formulas Chart (Item 1):

1. James D. Morrison (80120)
Candidate, State Representative

Report: semiannual report due July 15, 2016
File date: December 1, 2016 (139 days late)
Activity: none
Prior offenses: 30-day pre-election report due February 1, 2016 (\$500 fine appealed at the February 2017 meeting; Commission reduced to \$150; paid); and personal financial statement due February 12, 2016 (\$500 fine waived by Commission)
Penalty: \$10,000 – reduction to \$3,500; reverted to \$10,000 due to no response

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) + \$1,000 (next 10 days late @ \$100 per day) + \$2,000 (four 30-day segments @ \$500 per segment) + \$0 (remaining 8 days late do not add up to a full 30-day segment) = \$3,500.

On March 29, 2017, the Commission sent a determination letter informing Mr. Morrison that he is eligible for a reduction of the penalty to \$3,500 under the Ethics Commission Rules. The letter informed Mr. Morrison that the reduced fine would revert to the original amount assessed if he did not remit the payment by April 28, 2017, or request appeal. The Commission received no response, so the fine reverted to \$10,000 and was referred to the Attorney General for collection.

Request for Appeal: On May 18, 2017, the Commission received the appeal. Mr. Morrison requested an opportunity to attend the meeting and explain to the Commission his extenuating circumstances that led to his failure to file. Mr. Morrison was unable to attend the July 2017 meeting and asked that the matter be postponed until this meeting.

TEC Rules Determination: II-B – Formulas Chart (Items 2-3):

**2. Richard Knight, Jr. (39199)
Treasurer, 'DCUA' Dallas Committee on Urban Affairs**

- 1) Report: 30-day pre-election report due April 6, 2017
File date: April 10, 2017 (filed on paper; received 4 days late)
Activity: contributions = \$8,000.00; expenditures = \$5,000.00;
contributions maintained = \$5,309.41
Prior offenses: January 2014 semiannual report (\$500 fine waived under HB 89); and
as a PFS Filer – April 2015 PFS (\$500 fine paid)
Penalty: \$500 – no waiver

Basis: Critical report; Category B filer; two prior late-filing offenses in the last five years; good cause shown.

Formula: The fine is calculated at \$300 (good cause, 2 priors, 1st day late) + \$200 (next 2 days late @ \$100 per day) + \$0 (remaining 1 day late) = \$500. (The maximum statutory late fine for this report is \$500.)

- 2) Report: 8-day pre-election report due April 28, 2017
File date: May 1, 2017 (filed on paper; received 3 days late)
Activity: contributions = -0-; expenditures = \$800.00;
contributions maintained = \$5,009.41
Prior offenses: 30-day pre-election report due April 6, 2017 (report (1) above);
January 2014 semiannual report (\$500 fine waived under HB 89); and
as a PFS Filer – April 2015 PFS (\$500 fine paid)
Penalty: \$700 – no waiver

Basis: Critical report; Category B filer; did not meet the criteria for a waiver or reduction because the filer has three prior late-filing offenses in the last five years.

Total penalties: \$1,200

On July 19, 2017, the Commission sent a determination letter informing Mr. Knight that he is not eligible for a waiver of the total \$1,200 late-filing penalties under the Ethics Commission Rules. The letter requested that Mr. Knight remit the payment by August 18, 2017, or submit a request for appeal.

Request for Appeal: On July 24, 2017, the Commission received the appeal from Donald W. Hicks, Sr., P.C., General Counsel for DCUA. The appeal stated:

I hereby request an appeal of the July 19, 2017, Letter Determination made under the Commission Rules. The DCUA (the Committee) has been filing its required Reports *via* Certified Mail Return Receipt Requested since its establishment and participation in local elections. This is the first time these penalties have arisen since the Committee was established. The penalties are based on a misinterpretation of what is meant by "*filing.*" Every Government organization that I know of allows for *timely mailing as timely filing.* I would like to provide testimony regarding this appeal, if the Commission finds it helpful. I would like to know what appeal rights the Committee has beyond the requested appeal.

3. Adnan Tovar (56027)
Treasurer, 'ROCKGPAC' Rockwall Republican Executive Committee General Purpose PAC (CEC)

Report: 8-day pre-election report due April 28, 2017
File date: May 3, 2017 (5 days late)
Activity: contributions = -0-; expenditures = \$1,000.00;
contributions maintained = \$19,558.11
Prior offenses: 30-day pre-election report due February 3, 2014 (\$500 fine reduced to \$100 by Commission; paid); and runoff report due May 19, 2014 (\$500 fine waived under HB 89)
Penalty: \$900 – reduction to \$700

Basis: Critical report; Category B filer; two prior late-filing offenses in the last five years; good cause shown.

Formula: The fine is calculated at \$300 (good cause, 2 priors, 1st day late) + \$400 (next 4 days late @ \$100 per day) = \$700.

On May 24, 2017, the Commission sent a determination letter informing Mr. Tovar that he is eligible for a reduction of the penalty to \$700 under the Ethics Commission Rules. The letter requested that he remit the payment by June 23, 2017, or request appeal.

Request for Appeal: On June 12, 2017, the Commission received the appeal. Mr. Tovar requested an opportunity to appeal his case to the Commission at its meeting.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: September 14, 2017
SUBJECT: Corrected Reports Memo
Meeting Date: September 28, 2017

Substantial Compliance (Item 1)

1. Arcelia Trevino (80582)
District Judge

Report: 8-day pre-election report due October 31, 2016
Correction date: July 17, 2017
Original report: contributions = \$1,500.00; expenditures = \$1,032.71; contributions maintained = \$54.13
Corrected report: contributions = \$1,500.00; expenditures = \$1,032.71; contributions maintained = \$521.42
Prior corrections: none
Penalty: \$10,000
Recommendation: substantial compliance

Judge Trevino corrected the original report to increase the amount of total contributions maintained by \$467.29. The change to the incorrectly reported activity does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Waivers (Item 2)

2. Andrea B. 'Andi' St. Leger (80267)
Candidate, District Judge

Report: 8-day pre-election report due October 31, 2016
Correction date: March 28, 2017, and June 29, 2107
Original report: contributions = \$405.00; expenditures = \$3,524.83; contributions maintained = \$3,109.39
Corrected report #1: contributions = \$405.00; expenditures = \$1,255.40; contributions maintained = \$5,378.82
Corrected report #2: contributions = \$405.00; expenditures = \$3,524.83; contributions maintained = \$5,378.82
Prior corrections: none
Penalty: \$10,000
Recommendation: waiver

On March 28, 2017, Mrs. St. Leger corrected the original report to remove a \$2,269.43 payment for a printing expense on Schedule F1 and to increase the amount of total contributions maintained accordingly. Mrs. St. Leger swore that while preparing the original report, she spoke with the vendor and thought that the expenditure was paid in the reporting period. She later discovered that the vendor did not actually process the payment until after the 8-day report period ended. Mrs. St. Leger swore that she corrected the 8-day report within two days of learning that she had mistakenly included the same payment on both the 8-day and January semiannual reports. On June 29, 2017, after speaking with the Commission's legal staff, Mrs. St. Leger filed a second correction to accurately disclose the unpaid incurred obligation on Schedule F2 of the 8-day report. The expense was timely disclosed but on the wrong schedule. **Recommendation Based on Commission Guidelines: waiver.**



MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Ian Steusloff, General Counsel

DATE: September 14, 2017

SUBJECT: Termination of Campaign Treasurer Appointment

The commission is authorized to terminate the campaign treasurer appointment of an inactive candidate or a political committee. At the September 28, 2017, meeting you may vote to terminate the campaign treasurer appointment of the candidates and political committees listed in the following memorandum.

As you may recall, a candidate becomes “inactive” if the candidate files a campaign treasurer appointment with the commission and more than one year has lapsed since the candidate has filed any required campaign finance reports with the commission. The commission is not authorized to terminate the campaign treasurer of a candidate elected to any of the following offices: a statewide office; a district office filled by voters of more than one county; a judicial district office filled by voters of only one county; state senator; state representative; or the State Board of Education. The candidates included in the memorandum were not elected to any of those offices.

A political committee becomes “inactive” if the political committee files a campaign treasurer appointment with the commission and more than one year has lapsed since the campaign treasurer of the political committee has filed any required campaign finance reports with the commission.

Texas Ethics Commission
MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Ian M. Steusloff, General Counsel

DATE: September 14, 2017

SUBJECT: Termination of Campaign Treasurer Appointments

CANDIDATE

1. Deborah B. Shafto (00066498)

Last report filed: January 19, 2016
Treasurer appointment filed: January 21, 2016
Office sought: State Senator, District 6

2. Lee C. Crisp (00068211)

Last report filed: January 15, 2016
Treasurer appointment filed: November 20, 2013
Office sought: State Representative, District 60

3. Anthony Alcoser (00080169)

Last report filed: January 14, 2016
Treasurer appointment filed: September 2, 2015
Office sought: State Representative, District 118

4. David Wylie (00080102)

Last report filed: February 22, 2016
Treasurer appointment filed: July 17, 2015
Office sought: Tarrant County Party Chair118

5. John T. Floyd, III (00080478)

Last report filed: July 13, 2016
Treasurer appointment filed: December 15, 2015
Office sought: State Representative, District 29

POLITICAL COMMITTEES

**6. Alief Federation of Teachers Committee on Political Education (00063388)
Veronica F. Thibideaux, Treasurer**

Last report filed: January 15, 2016
Treasurer appointment filed: January 18, 2008

**7. Three Amigos (00070179)
Michael Gibson, Treasurer**

Last report filed: January 14, 2016
Treasurer appointment filed: May 5, 2014

**8. Citizens for Judicial Reform (00080679)
Christine A. Jager, Treasurer**

Last report filed: Report never filed
Treasurer appointment filed: February 17, 2016

**9. Texas Working People CWA Political Action Committee (00080730)
Derrick Osobase, Treasurer**

Last report filed: Report never filed
Treasurer appointment filed: March 1, 2016

**10. Friends of Charters (00080868)
Wyatt Truscheit, Treasurer**

Last report filed: Report never filed
Treasurer appointment filed: April 27, 2016

Texas Ethics Commission
MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Seana Willing, Executive Director

DATE: September 14, 2017

SUBJECT: Agenda Item: Report More Than 30 Days Late; Imposition of
Additional Fine
Meeting Date: September 28, 2017

The filer listed below is a filer whose report is more than 30 days late. This filer has been issued a warning of liability by registered mail, as required by Section 305.033(c), Government Code (lobby). At this meeting, you may vote to increase the penalty to an amount not to exceed \$10,000, as set out by the applicable statute noted above. Staff recommendation is to increase the penalty in this case by \$500, for a total penalty of \$1,000.

Lobbyist

1. Zachary Male (00070517)

Annual Lobby Activities Report due 1/10/2017 – Report not filed; \$500 penalty not paid and not referred to AG because not yet at referral threshold.

Previous violation:

- Lobby Activity Report due 1/11/2016 – Report filed late; paid \$500 penalty.