

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

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

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

MEETING AGENDA

Date and Time: 10:00 a.m., Wednesday, March 20, 2024
Location: Room E1.014, Capitol Extension, Austin, Texas

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

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

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Section 551.074, Government Code, Personnel Matters, Closed Meeting.**
 - A. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; Cause No. 03-21-00033, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345th Judicial District Court of Travis County, Texas; and related cases, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas, and Cause No. 22-1064, *Empower Texans, Inc. and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Texas Supreme Court.
 - iii. Cause No. D-1-GN-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court in Travis County, Texas;

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

and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

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

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

C. Discussion and possible action related to personnel matters.

D. Discussion to seek legal advice regarding Chapter 552 of the Government Code.

E. Reconvene in open session.

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

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

NOTICE: Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the

Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

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1. Call to order; roll call.
2. Discussion regarding dates for next quarterly Commission meeting.
3. Approve minutes for the following meetings:
 - Executive Session – December 18, 2023; and
 - Public Agenda – December 18, 2023.

RULEMAKING

Rule Publication

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

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

ADVISORY OPINIONS

7. Draft Advisory Opinion No. AOR-693: Whether a Texas Limited Liability Company that is a wholly-owned subsidiary of a Master Limited Partnership that is traded on the New York Stock Exchange is prohibited by Chapter 253 of the Election Code from making certain political contributions.

This opinion construes Section 253.094 of the Election Code.

8. Draft Advisory Opinion No. AOR-697: How various provisions of title 15 of the Texas Election Code apply to a Texas “purpose trust” formed under Section 112.121, Texas Property Code.

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

9. Draft Advisory Opinion No. AOR-698: Whether employees of a state agency may provide a list of preferred items to non-profit entities that would be used in carrying out the agency’s mission so long as the items are not provided to employees for their personal use or enjoyment.

This opinion construes Chapter 39 of the Penal Code.

10. Draft Advisory Opinion Nos. AOR-699 and AOR-701: Where must candidates for appraisal district board of directors file campaign treasurer appointments and campaign finance reports?

This opinion construes Title 15 of the Election Code.

11. Draft Advisory Opinion No. AOR-700: Whether the purchase of a storage trailer is a normal overhead, administrative, or operating cost of a political party such that contributions from a corporation may be accepted and used for its purchase.

This opinion construes Subchapter D of Chapter 253 and Chapter 257 of the Election Code.

12. Draft Advisory Opinion No. AOR-702: Whether a state university may provide prizes to randomly selected attendees of sporting events under Chapter 36 of the Penal Code when the recipient of the prize may be a university employee.

This opinion construes Chapter 36 of the Penal Code.

ADMINISTRATIVE WAIVER OF FINES AND TREASURER TERMINATIONS

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

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

Staff Recommendation: 8-Day Correction Waiver

- A. Bryan Bufkin (00085674)
- B. Michael P. Doyle, Campaign Treasurer, Harris County Democratic Party (00015507)
- C. Justin Ray (00083168)

Staff Recommendation: Waiver

- D. Raymond A. Ash (00082333)
- E. Carey Council (00085594)
- F. Vivian Garza-Steele, Campaign Treasurer, Zachry Construction Corporation Political Action Committee (00017353)
- G. Daniel O'Dell, Campaign Treasurer, Texas Dental Association Political Action Committee (00015960)

Staff Recommendation: Reduction

- H. Kim Cooks (00069299)
- I. Kit Marshall (00085998)

Staff Recommendation: No Further Reduction or Waiver

- J. Evelyn Brooks (00086437)
- K. Joshua Markle (00083540)
- L. Osbert Rodriguez III (00080354)
- M. Bobby Wilkinson (00081580)
- N. Omar Yanar (00086315)
- O. Brittany Yowell, Former Campaign Treasurer, Bond Steering Committee Members for Trenton ISD (dissolved, 00086682)

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

Individuals:

- 1. Victor Avila, Jr. (00086308)
- 2. Andrew M. Bayley (00085862)
- 3. LaDale A. Buggs (086009)
- 4. Cameron A. Campbell (00086284)
- 5. Cynthia T. Cavazos (00069817)
- 6. Jake Collier (00086210)
- 7. Paula K. Knippa (00085313)
- 8. Kathi A. Marvel (00086314)
- 9. Brian M. McConnell (00084268)

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

10. Allan E. Meagher (00086437)
11. Samuel L. Milledge, II (00085622)
12. Taylor M. Mondick (00086236)
13. Michael Monreal (00086047)
14. Frank A. Ramirez, IV (00085801)
15. Jesse Ringness (00086346)
16. Norma J. Witherspoon (00084327)

Political Committees:

1. Asher Gillaspie, Treasurer, We Can Keep It (00086532)
2. Rachel Stoerkel, Treasurer, Texans for Working Families (00086920)
3. Rachel Stoerkel, Treasurer, ONE Texas, Inc. (00087062)
4. Christina Koob, Treasurer, Jolt PAC (00084696)
5. Gustave Guerra, Treasurer, United Together (00080982)
6. Brian T. Stoller, Treasurer, Lone Star State of Mind PAC (00082248)
7. Jana D. Hawkins, Treasurer, Jefferson County Association of Deputy Sheriffs and Correction Officers PAC (00017014)
8. Jeanie M. Davilla, Treasurer, Heart of Texas Apartment Association (00016366)
9. Zach D. Maxwell, Treasurer, Hood County Republican PAC (00086612)
10. Daniel A. Cuellar, Treasurer, Laredo Political Action Committee (00067023)
11. Becky Allen, Treasurer, Preferred Care Partners Political Action Committee (00069436)
12. Michael J. Warner, Treasurer, Friends of Texas Southern University (00087131)
13. Kimberly Y. Evans, Treasurer, Friends of Public Education 4 Frisco ISD PAC (00087047)
14. Michael J. Warner, Treasurer, A Better Texas PAC (00083091)
15. Phillip W. Carpenter, Treasurer, A United Allen (00086606)
16. Kristen Perez, Treasurer, Strength In Unity (00085383)
17. Melissa E. Hernandez, Treasurer, Friends of GPISD (00087079)
18. Brian Stoller, Treasurer, South East Democratic Alliance (00083997)

OTHER MATTERS

15. Adjourn.

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

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

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

Email address:

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

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

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

<rule>

Subchapter A. General Rules

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

*n

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

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

<rule>

Subchapter B. Officers and Employees of the Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

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

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

<rule>

Subchapter A. General Rules

§6.1. Definitions.

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

- (1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).
- (2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning Administrative Procedure).
- (3) Agency--The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.
- (4) Commission--The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a and in the Government Code, Chapter 571.
- (5) Document--A report, complaint, response, letter, or any other written material.
- (6) Executive director--The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.
- ~~(7) Family member or relative—An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity).~~

~~(78)~~ Filer--A person required to file a report with the commission or a local filing authority in accordance with a law enforced by the commission~~this title~~.

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

~~(94)~~ Local filing authority--A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with a law enforced by the commission~~this title~~, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority).

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

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

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

~~(134)~~ Postmark--A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(D) district judge;~~

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

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

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

§6.9. Computation of Time.

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

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

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

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

*n

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

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

<rule>

Subchapter B. Officers and Employees of the Commission

§6.21. Officers of the Commission.

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

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

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

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

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

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

(1) Sign previously approved subpoenas and orders;

(2) Schedule hearings and meetings;

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

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

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

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

§6.23. Commission Staff.

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

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

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

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

*n

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

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

<rule>

Subchapter C. Commission Meetings

§6.35. Called Meetings.

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

§6.39. Meeting Agenda.

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

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

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

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

§6.43. Speakers Addressing the Commission.

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

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

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

§6.45. Order and Conduct of Commission Meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 12. SWORN COMPLAINTS

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

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

<rule>

Subchapter A. General Provisions and Procedures

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

*n

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

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

<rule>

Subchapter B. Filing and Initial Processing of a Complaint.

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

*n

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

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

<rule>

Subchapter C. Investigation and Preliminary Review.

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

*n

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

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

<rule>

Subchapter D. Preliminary Review Hearing.

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

*n

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

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

<rule>

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

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

*n

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

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

<rule>

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

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

*n

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

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

<rule>

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

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

*n

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

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

<rule>

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

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

*n

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

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

<rule>

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

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

*n

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

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

<rule>

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

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

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

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

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

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

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

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

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

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

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

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

regarding Notice of Formal Hearing, 12.83 regarding Formal Hearing: Venue, 12.84 regarding Presentation of Evidence, 12.85 regarding Rules of Evidence, and 12.86 regarding Number of Exhibits.

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

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

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

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

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

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

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

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

available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

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

Chapter 12. SWORN COMPLAINTS

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

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

<rule>

Subchapter A. RESPONDENT'S RIGHTS

§12.01. Notice

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

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

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

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

§12.02. Representation by Counsel

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

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

(c) The commission may, through the approval of its executive director, admit an attorney who is a resident of and licensed to practice law in another state, and who is not an active member of the State Bar of Texas, to represent a respondent before the commission if the nonresident attorney

complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas and files a motion, accompanied by proof of compliance with those provisions, with the commission requesting to be admitted to represent a respondent.

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

§12.03. Ex Parte Communications

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

§12.04. Agreements to be in Writing

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

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

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

*n

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

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

<rule>

Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

§12.11. Deadline for Filing a Complaint

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

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

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

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

§12.12. File Date for a Complaint

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

§12.13. Description of Violation

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

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

§12.14. Statement of Facts

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

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

§12.15. Commission Initiated Complaint

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

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

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

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

*n

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

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

<rule>

Subchapter C. INVESTIGATION AND DISCOVERY

§12.21. Response to Notice of Complaint

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

(1) be in writing;

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

(3) be signed by the respondent.

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

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

§12.22. Written Questions

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

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

§12.23. Production of Documents During Preliminary Review

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

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

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

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

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

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

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

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

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

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

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

§12.24. Proposed Settlement Before Preliminary Review Hearing

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

§12.25. Subpoenas Issued by Commission

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

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

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

§12.26. Subpoenas Issued by Counsel for the Respondent

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

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

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

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

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

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

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

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

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

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

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

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

(1) a preliminary review hearing; or

(2) a formal hearing.

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

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

(f) Service.

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

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

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

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

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

(g) Response.

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

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

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

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner

as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

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

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

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

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

<rule>

Subchapter D. PLEADINGS AND MOTIONS

Division 1 – General Rules

§12.31. Purpose and Effect of Motions

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

§12.32. Required Form of Motions

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

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

§12.33. Certificate of Conference

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

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

§12.34. Motion Deadlines

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

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

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

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

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

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

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

§12.35. Method of Filing

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

(1) the sworn complaint number; and

(2) the title of the document.

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

§12.36. Service of Documents

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

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

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

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

(A) return the filing;

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

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

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

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

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

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

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

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

§12.37. Non-conforming Documents

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

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

(2) accept the filing.

§12.38. Amended and Supplemental Filings

A party may amend or supplement its pleadings as follows:

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

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

§12.39. Application of this Subchapter

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

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Subchapter D. PLEADINGS AND MOTIONS

Division 2 – Types of Motions

§12.41. Motion to Extend Time

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

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

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

(2) the specific reason for the request; and

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

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

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

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

§12.42. Motion for Continuance

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

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

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

(2) the specific reason for the request; and

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

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

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

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

(2) the date and time of the proceeding.

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

§12.43. Motion to Dismiss

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

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

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide

the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

§12.44. Motion for Summary Disposition

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

(b) Unless otherwise ordered by the presiding officer:

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

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

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

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

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

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

(d) Responses to motions.

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

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

(e) Summary disposition evidence.

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

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

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

(f) Proceedings on motions.

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

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

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

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

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

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

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

§12.45. Motion for Sanctions

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

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

(A) in bad faith;

(B) for the purpose of harassment; or

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

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

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

(4) violating §2.51 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Subchapter E. HEARINGS

Division 1 – General Rules

§12.51. Conduct and Decorum

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

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

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

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

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

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

(1) when addressing the commission; and

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

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

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

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

(1) issuing a warning;

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

(3) excluding persons from the proceeding;

(4) recessing the proceeding; and

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

§12.52. Private Deliberations

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

§12.53. Record of Rulings

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

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Subchapter E. HEARINGS

Division 2 - Powers of the Presiding Officer

§12.61. Selection and Delegation of Presiding Officer

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

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

§12.62. Set Hearings

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

§12.63. Consolidate or Sever Matters for Hearing

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

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

§12.64 Conduct Hearings

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

(1) administer oaths;

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

(3) require the prefiling of exhibits and testimony;

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

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

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

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

§12.65 Rule on Evidentiary Matters

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

§12.66 Sign Orders and Subpoenas

The presiding officer may sign previously approved subpoenas and orders.

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Subchapter E. HEARINGS

Division 3 – Preliminary Review Hearings

§12.71. Notice of Preliminary Review Hearing

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

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

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

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

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

§12.72. Preliminary Review Hearing

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

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

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Subchapter E. HEARINGS

Division 4 – Formal Hearings

§12.81. Order of Formal Hearing

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

§12.82. Notice of Formal Hearing

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

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

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

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

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

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

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

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

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

§12.83. Formal Hearing: Venue

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

§12.84. Presentation of Evidence

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

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

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

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

§12.85. Rules of Evidence

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

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

§12.86. Numbering of Exhibits

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

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

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

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

*n

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

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

<rule>

Subchapter F. RESOLUTIONS

§12.91. Agreed Resolutions

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

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

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

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

(2) may include a civil penalty.

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

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

§12.92. Resolution of Technical or De Minimis Allegations

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

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

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

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

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

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

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

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

§12.93. Default Proceedings

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

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

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

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

(3) the notice of hearing was:

(A) received by the defaulting party; or

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

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

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

§12.94. Final Orders after Formal Hearings

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

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

EXHIBIT F

Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

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

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

§ 26.1. Disclosure Statement

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

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising does not include written text.

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

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on:

(1) campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical;

(2) political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:

(i) is not an officeholder, candidate, or political committee; [~~and~~]

(ii) did not make an expenditure exceeding \$100 in a reporting period for political advertising beyond the basic cost of hardware messaging software and bandwidth; and

(iii) did not post or re-post the political advertising in return for consideration.

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

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

34 (i) contains the disclosure statement; or

35 (ii) is exempt from containing the disclosure statement under Subsection (c)(3).

36 (d) For the purposes of Subsection (c), an “Internet social media profile webpage” is an Internet
37 webpage on a website where members of the public may, for no charge, connect electronically
38 with other members of the public and share text, images, videos, and similar forms of
39 communications.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. ____

[Date]

ISSUE

Whether a Texas Limited Liability Company that is a wholly-owned subsidiary of a Master Limited Partnership that is traded on the New York Stock Exchange is prohibited by Chapter 253 of the Election Code from making certain political contributions. (AOR-693).

SUMMARY

A Texas Limited Liability Company that is owned by a partnership whose shares are publicly-traded on an exchange is subject to the Chapter 253 corporate contribution prohibition if any share of the partnership is owned by a corporation.

FACTS

The requestor is a Texas Limited Liability Company formed under the Texas Limited Liability Company Act and is managed by its sole member, which is another LLC (Parent 1).

Parent 1 is an LLC formed under a different state's laws and is managed by its sole member, another LLC (Parent 2).

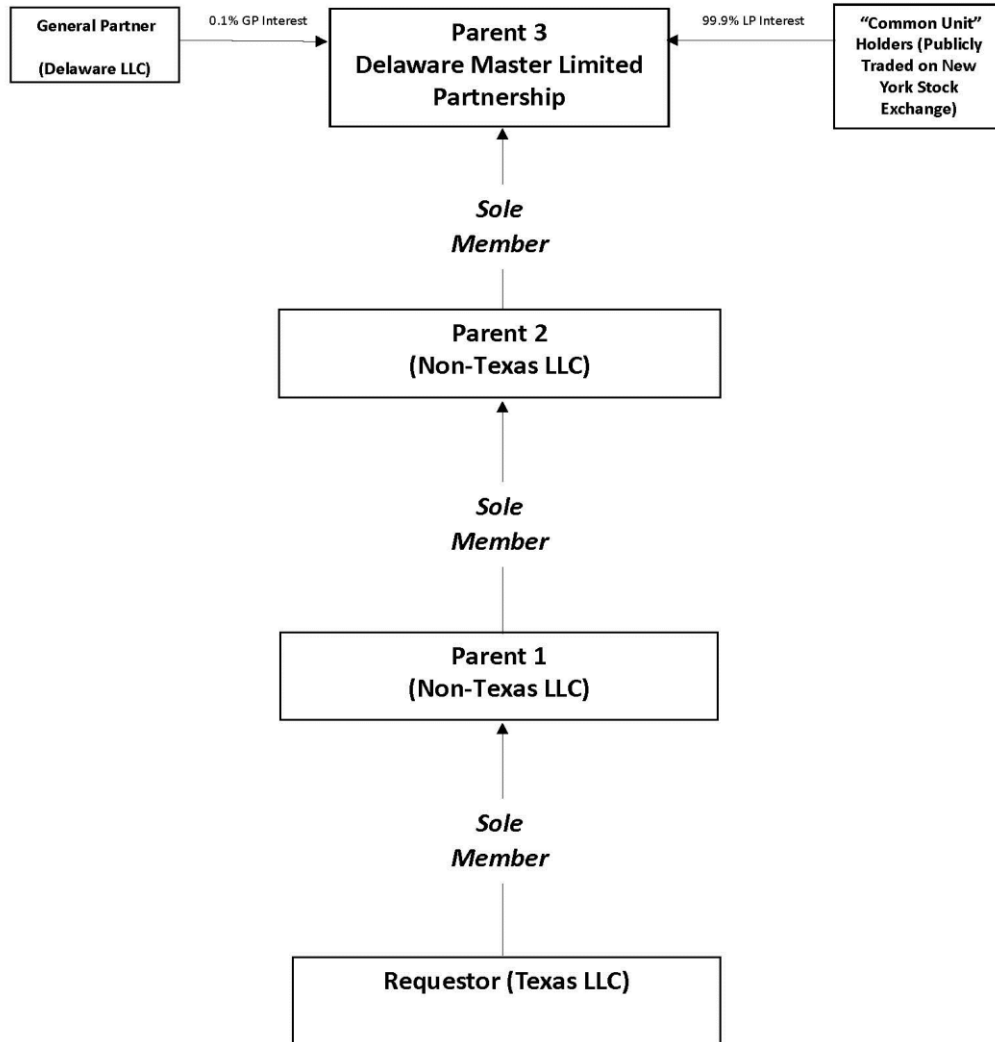
Parent 2 is an LLC formed under a different state's laws and is managed by its sole member, another LLC (Parent 3).

Parent 3 is a Delaware Master Limited Partnership. Parent 3 was formed under the Delaware Revised Uniform Partnership Act and is managed by its different LLC that serves as its general partner (General Partner). The chain of ownership is illustrated below.

Parent 3 is a master limited partnership. A "master limited partnership is a limited partnership whose interests, called 'common units,' are publicly traded." *Williams v. Pipe Pros, LLC*, No. 6:20-CV-00057, 2021 U.S. Dist. LEXIS 46406, at *3 n.2 (S.D. Tex. 2021) (internal citation omitted). "Master limited partnerships are similar to traditional limited partnerships in that they have limited partners, known as 'unitholders,' who provide capital, and a general partner who manages the partnership's affairs. Such partnerships differ, however, from traditional limited partnerships in that master limited partnerships are publicly traded." *Id.*

**AGENDA 3, ITEMS 7 THROUGH 12, EXHIBIT A
STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION**

The requestor states the board of directors of the General Partner has ultimate management authority over the General Partner, and the entire chain of entities, including the requestor. All of the General Partner's board members are individuals.



ANALYSIS

The Texas Election Code generally prohibits corporations from making political contributions or expenditures. Tex. Elec. Code § 253.094. The corporate contribution restriction does not apply to all business forms. Instead it “applies only to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation.” *Id.* § 253.091. The prohibition also applies to the following associations, whether incorporated or not, including: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or inter insurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies. *Id.* § 253.093.

The question often arises, as it does here, whether a business association that is not organized as a corporation is nevertheless subject to the corporate contribution restriction if it has corporate ownership.

In Advisory Opinion No. 215 the TEC held that a “partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations.” Tex. Ethics Comm’n Op. No. 215 (1994), affirmed by Tex. Ethics Comm’n Op. No. 221 (1994). The TEC reasoned that “if a joint venture owned in part by a corporation made political contributions, corporate funds would be used to finance political activity.” *Id.*

In EAO 221, the TEC was asked to reconsider EAO 215 under the following facts:

- (a) the corporate partners play no decision making role in, or exercise any control over . . . political contributions/expenditures;
- (b) the non-corporate agent or employee of the partnership exercising control over such political contributions/expenditures is not an officer, employee or agent of any of the corporate partners;
- (c) contributions/expenditures are made only from partnership profits and not from contributions from corporate partners;
- (d) there are valid business reasons for the use of the partnership entity by the corporate partners and such use is not merely a subterfuge for circumvention of section 253.094 of the Election Code; and
- (e) the partnership is not an association described in Section 253.093 of the Texas Election Code.

Tex. Ethics Comm’n Op. No. 221 (1994). The TEC found that “[n]one of the factors listed above would permit a partnership with corporate partners to make political contributions or expenditures.” *Id.* The TEC similarly held that a limited liability company is subject to the corporate contribution restriction if it “is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D.” Tex. Ethics Comm’n Op. No. 383 (1997).

**AGENDA 3, ITEMS 7 THROUGH 12, EXHIBIT A
STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION**

The requestor is wholly owned by a master limited partnership that is organized as a Delaware limited partnership under the Delaware Revised Uniform Partnership Act. The Master Limited Partnership (“MLP”) is traded daily on the New York Stock Exchange. Anyone—including corporations—may buy or sell units of the MLP. Ownership interest in the MLP changes daily.

Following the TEC’s past decisions, any amount of corporate ownership of an LLC will subject the LLC to the corporate contribution restriction. Applying that precedent to this request compels the conclusion that state law prohibits the requestor from making political contributions if any share of the MLP is owned by a corporation.

DRAFT

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. ____

[Date]

ISSUE

How various provisions of title 15 of the Texas Election Code apply to a Texas “purpose trust” formed under Section 112.121, Texas Property Code. (AOR-697).

SUMMARY

A trust is not a separate legal entity and therefore not a distinct “person” for the purposes of determining political committee status and the application of campaign finance rules generally. Therefore, the general campaign finance restrictions and reporting rules apply to the people comprising the trust, i.e., the people funding or making contribution or expenditure acceptance decisions on behalf of the trust.

The people providing money to a trust and deciding how money will be spent on behalf of a trust may be treated as a Texas political committee if, just like any other group of people acting in concert, they meet the generally applicable criteria for forming a political committee.

A purpose trust comprised entirely of funds from an individual is not subject to the corporate contribution ban under Section 253.093 of the Election Code and may make political contributions to candidates, officeholders, and political committees.

A purpose trust that is not a political committee will be subject to the corporate contribution ban if the trust organizes itself as a corporation—even it incorporates for liability purposes only.

FACTS

The requestor asks various questions relating to the application of campaign finance rules to an unincorporated Texas “purpose trust.”

Texas law defines a trust as:

a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property:

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION

- (A) for the benefit of another person; or
- (B) for a particular purpose, in the case of a [purpose trust].

Tex. Prop. Code § 111.004(4) (defining “express trust”); *see also Ray Malooly Tr. v. Juhl*, 186 S.W.3d 568, 570 (Tex. 2006).

A “purpose trust” is a unique type a trust created by the 88th Legislature. Acts 2023, 88th Leg. R.S., Ch. 112 (H.B. 2333), Sec. 2., codified as Subchapter F of Chapter 112, Tex. Property Code. Typically, a trust requires an identifiable beneficiary to be effective. However, a “purpose trust” may be “created for a noncharitable purpose without a definite or definitely ascertainable beneficiary.” Tex. Prop. Code § 112.121(a).

Under Texas law, a purpose trust has the following characteristics:

- It is enforced by one or more trust enforcers named in the trust instrument;
- Its trust enforcers are fiduciaries required to enforce the purpose and terms of the trust;
- Its trust enforcers are entitled to reasonable compensation;
- The trust instructions may provide for successor trust enforcers; and
- If a purpose trust ends up with no trust enforcer, a court properly exercising jurisdiction shall appoint one.

See Tex. Prop. Code § 112.121 et seq.

The requestor is considering creating a purpose trust under Section 112.121 of the Property Code. He plans to use at least some trust assets to make political expenditures and political contributions to Texas candidates and officeholders. The requestor states the trust’s only source of funds and assets would be “[the requestor’s] personal funds and assets, including shares of stock in corporations that are held by [the requestor] personally, as well as any investment income the trust may earn from its funds and assets” and would not accept any corporate funds.

The purpose of the requestor’s trust would be “bringing about civic betterments and social improvements.” The requestor believes it would “qualify as a social welfare entity under Section 501(c)(4) of the Internal Revenue Code.”

ANALYSIS

The requestor asks a series of questions regarding the application of title 15 of the Election Code to a trust. Most of the questions turn on whether a trust is treated as distinct and singular “person.” For the reasons explained below, a trust is not a distinct, singular person for purposes of campaign finance. In essence, the trust form is ignored and the normal campaign finance restrictions and reporting rules apply to the trust’s constituent parts: the people funding the trust and making decisions about funding or how to spend the trust assets.

Unlike a corporation, a trust is not a separate legal entity.

In Texas, “the term ‘trust’ refers not to a separate legal entity but rather to the fiduciary relationship governing the trustee with respect to the trust property.” *Juhl*, 186 S.W.3d at 570

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION

(citing *Huie v. DeShazo*, 922 S.W.2d 920, 926 (Tex. 1996) (holding that treating trust rather than trustee as attorney’s client “is inconsistent with the law of trusts”)).

This stands in contrast to a corporation, which is a distinct legal entity. Texas’ Third Court of Appeals has held that a corporation acting alone did not have standing to challenge the law related to political committees because the corporation was a single person, not a group of persons. *Tex. Home Sch. Coalition Ass’n v. Tex. Ethics Comm’n*, No. 03-17-00167-CV, 2018 Tex. App. LEXIS 9075, at *10 (Tex. App.—Austin Nov. 7, 2018, no pet.) (mem. op.). A federal district court reached the same conclusion. *Lake Travis Citizens Council v. Ashley*, No. 1:14-CV-994-LY, 2016 U.S. Dist. LEXIS 151797, at *4-5 (W.D. Tex. 2016) (“[TEC] argues that [nonprofit corporation] is not at risk of regulation as a political committee because it is a nonprofit corporation and therefore treated as a singular person, not a group of persons, under the Texas Election Code. *See* Tex. Gov’t Code § 311.005(2). The court agrees.”).

Both courts turned to the Texas Code Construction Act’s definition of “person” to reach the conclusion that a corporation is a singular person. *Tex. Home Sch. Coalition Ass’n*, 2018 Tex. App. LEXIS 9075, at *10; *Lake Travis*, 2016 U.S. Dist. LEXIS 151797, at *4-5. Subsequent to these opinions, the 86th Legislature amended the statutory political committee definition reviewed by the courts by deleting the phrase “group of persons” and replacing it with “two or more persons.” Acts 2019, 86th Leg., R.S., Ch. 1127 (H.B. 2586), Sec. 1, *codified at* Tex. Elec. Code § 251.001(12). The amendment does not substantively affect the analysis.

As defined by the Code Construction Act, “‘person’ includes corporation, organization, government or governmental subdivision or agency, business trust, estate, *trust*, partnership, association, and any other legal entity.” Tex. Gov’t Code § 311.005(2) (emphasis added). The requestor asserts that just like a “corporation,” a “trust” is a “person” under the Code Construction Act and therefore cannot meet the political committee definition of “two or more persons” when acting alone.

In *Juhl*, the Court expressly rejected the argument, raised by this requestor, that a trust should be treated a separate legal entity because the Code Construction Act definition of “person” includes a “trust.” *Juhl*, 186 S.W.3d at 570. The Court opined:

The definitions in the Code Construction Act apply unless other statutes or contexts require a different definition. Tex. Gov’t Code § 311.005(2). The most relevant code - the Texas Trust Code - explicitly defines a trust as a relationship rather than a legal entity. *See* Tex. Prop. Code § 111.004(4).

Id. Not only is a trust defined as a relationship rather than an entity in the Property Code, “trust” does not appear in the definition of a “person” in the Property Code. Tex. Prop. Code § 111.004(10). The definitions in the Property Code, as interpreted by the Texas Supreme Court, require a different definition of “trust” than that in the Code Construction Act. *See Juhl*, 186 S.W.3d at 570. Therefore, a trust is not a distinct and singular person.

For the purposes of title 15, the trust form is generally ignored, and the normal campaign finance and reporting rules are applied to the trust’s constituent parts.

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION

The individuals contributing to or making contribution or expenditure decisions for a trust may be treated as a political committee if the group has a principal purpose making political expenditures or accepting political contributions.

A political committee is “*two or more persons acting in concert with a principal purpose of accepting political contributions or making political expenditures.*” Tex. Elec. Code § 251.001(12) (emphasis added).

The law does not specify what two or more persons must do to “act in concert.” However, the phrase “in concert” is commonly defined as simply acting together. Merriam-Webster.com Dictionary, s.v. “concert,” accessed February 27, 2024, <https://www.merriam-webster.com/dictionary/concert>. There are also few organizational requirements of a political committee. It must appoint a campaign treasurer responsible for filing reports disclosing political contributions and expenditures. Tex. Elec. Code § 252.001. It must also disclose the person appointing the treasurer and the name of each person who determines to whom the committee makes contributions or the name of each person who determines for what purposes the committee makes expenditures. *Id.* § 252.003, .0031. The treasurer, person appointing the treasurer, and political committee expenditure and contribution decision makers, would all be people acting in concert that form a political committee. The people acting in concert to form the political committee would also include the people providing political contributions to the trust, *i.e.*, contributions made with the intent that they be used in connection with a campaign for elective office or on a measure, or given to an officeholder for officeholder expenditures in connection with an election. Tex. Elec. Code § 251.001(3), (4) (5) (defining political contribution); *see also Lake Travis*, 2016 U.S. Dist. LEXIS 151797, at *5.

Therefore, whether a trust is a political committee requires the same analysis applicable to any group of people acting in concert. In the context of a trust, the trust donor(s) and the people responsible for deciding how trust assets are spent (presumably the trustee or trust enforcers) would constitute the people comprising a political committee if making political expenditures or accepting political contributions is a principal purpose of the trust. As defined by TEC rule, the trust would have such a principal purpose if making Texas political expenditures comprises more than 25 percent of its annual expenses. *See* 1 Tex. Admin. Code § 20.1(17) (defining “principal purpose” in part when “the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year.”); *see also id.* §20.18(A)(iv) (defining a political expenditure, in part, as making a political contribution to a candidate officeholder or political committee).

The trust form is disregarded for purposes of campaign finance reporting.

The requestor asks whom should be identified as the contributor by a recipient of a political contribution from the trust.

A candidate, officeholder, or political committee must report the “full name” of political contributions made by electronic transfer in any amount or made by other means above a threshold amount. Tex. Elec. Code § 254.031(a)(1), (1-a). The law prohibits a person from making a contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution. *Id.* § 253.001.

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION

Therefore, the identity of the contributor is not only an important fact the recipient must know for proper disclosure, but also information the trust must know to follow the law.

Again, the trust form is generally ignored and the normal reporting rules apply. If the trust is comprised of two or more people and has a principal purpose of accepting political contributions or making political expenditures, it must file and report as a political committee. But if the trust does not constitute a political committee (either because it lacks the necessary principal purpose or involves only a single person acting alone), then recipients of its contributions must disclose the trust donor as the contributor, and any qualifying direct campaign expenditures made by the trust must be disclosed in the name of the trust donor. It would also be permissible to disclose the name of the trust donor with the notation that it was provided through a trust (e.g. Joe Smith (through the Joe Smith Purpose Trust)).

Under the facts presented, a purpose trust would not be subject to the ban on corporate contributions.

Corporations are generally prohibited from making political contributions to candidates. *See* Tex. Elec. Code § 253.094 (“[a] corporation or labor organization may not make a political contribution that is not authorized by [Subchapter D, of Chapter 253]”). Subchapter D does not authorize corporate or labor organization contributions to candidates or officeholders and allows corporations or labor organizations to contribute to political committees in only limited circumstances.

The corporate contribution restriction does not apply to all business forms. Instead, it “applies only to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation.” Tex. Elec. Code § 253.091.

A trust is not a corporation organized under one of the laws specified in Section 253.091. Therefore, a purpose trust consisting of only the funds of an individual and not accepting any corporate funds would not be considered a corporation under Section 253.091.

The corporate contribution restriction also applies to certain associations, whether incorporated or not, including “trust companies.” *Id.* § 253.093(a). However, a trust is different from a “trust company.” A trust company is a company that acts as a trustee. *See* Trust Company Definition, Black’s Law Dictionary 121 (3rd Pocket ed. 1996); *see also* 10 Am. Jur. 2d Banks § 11 (defining a trust company as “a corporation, usually engaged in a general banking business, and in particular as a compensated trustee of funds or property. A bank for purposes of regulation.”).

A trust company acts as a trustee on behalf of a trust, but it is not itself a trust. A trust is therefore not considered organized as a corporation under Section 253.091 and is not one of the types of associations subject to the contribution restriction regardless of organization. As a consequence, a purpose trust comprised entirely of funds from an individual is not subject to the corporate contribution ban under Section 253.093 and may make political contributions to candidates, officeholders and political committees.¹

¹ The requestor does not ask and we do not reach the applicability of the corporate contribution restriction to trusts other than a purpose trust comprised entirely of funds from an individual.

STAFF DRAFT; NOT FINAL UNLESS ADOPTED BY COMMISSION**A purpose trust that incorporates will be subject to the corporate contribution prohibition if it is not a political committee incorporating for liability purposes only.**

The requestor asks whether the purpose trust would still be able to make contributions to candidates and unrestricted contributions to political committees if it incorporates for liability purposes only.

The requestor proposes stating in the trust's Certificate of Formation "that it is incorporating for liability purposes only, and that its principal purpose is to bring about civic betterments and social improvements (which may, in some instances, entail making political contributions pursuant to the purpose and terms of the trust)."

The Election Code allows a "political committee the only purpose of which is accepting political contributions and making political expenditures" to incorporate for liability purposes only without being subject to the restriction on corporate contributions. Tex. Elec. Code § 253.092. A political committee may avail itself of this exception by "providing in its official incorporation documents that it is a political committee that is incorporating for liability purposes only, and that its only principal purpose is to accept political contributions and make political expenditures." Tex. Admin. Code § 24.1(d).

Political committees are generally subject to registration and periodic reporting obligations to disclose all political contributions accepted by the political committee and spent by the political committee. *See generally*, Tex. Elec. Code, Chapters 252, 254.

The plain text of the statute applies the exception to only (1) "a political committee" (2) "the only principal purpose of which is accepting political contributions and making political expenditures." *Id.* We decline to extend the statutory exception beyond entities expressly identified by the legislature. Therefore, if the purpose trust is not a political committee with its only principal purpose of accepting political contributions and making political expenditures, it would not be able to incorporate for liability purposes only and still make political contributions to candidates and officeholders or unrestricted political contributions to political committees.

However, if the trust instrument establishes the trust to have as its only principal purpose accepting political contributions and making political expenditures and the trust is a political committee, it would be able to incorporate for liability purposes only and continue to make political contributions under Section 253.092.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether employees of a state agency may provide a list of preferred items to non-profit entities that would be used in carrying out the agency's mission, if the gifts are not provided to employees for their personal use or enjoyment. (*AOR-698*).

SUMMARY

Under the facts presented, the solicitations would be for gifts to the agency rather than individual employees. Therefore, the Penal Code gift restrictions would not apply. Whether an agency may solicit or accept gifts is governed by other law specifically applicable to that agency, over which the Ethics Commission has no interpretive authority.

FACTS

The requestor represents a division of a state agency that investigates reports of alleged abuse, neglect, or financial exploitation of a certain population of individuals. The agency also provides short-term or emergency services to remedy substantiated cases of abuse, neglect or financial exploitation. Certain non-profit entities wish to assist the agency in its care of its clients. The requestor proposes providing a list of items that would be most beneficial to the agency in carrying out its mission. The requestor states that solicitations would be for gifts that would not be used by employees for their personal use or enjoyment and that the gifts would be used in carrying out the agency's powers and duties.

ANALYSIS

Absent an exception, a public servant is generally prohibited from soliciting or accepting "any benefit" from a person subject to the public servant's jurisdiction. *See* Tex Gov't Code §§ 36.08; 36.10 (providing exemptions to the general prohibition). However, gifts that primarily benefit the agency, rather than an employee of the agency are considered gifts to the agency. Tex. Ethics Comm'n Op. 31 (1992); *see also* Atty Gen, Op. JH-1309 at 4-5 (1978) (noting that an officer or employee may accept gifts on behalf of agency if agency has authority to accept gifts). *But see* Tex. Ethics Comm'n Op. 62 (1992) ("A consumable gift unrelated to an agency's mission would not be a gift to an agency.").

Providing a list of preferred items to a potential donor is soliciting a benefit. However, the requestor states the solicitation would be for items that would benefit the agency in providing

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION

care to its clients and the items would not be for employees' personal use or enjoyment. Under the requestor's facts, the gifts would benefit the agency not the employees of the agency. Therefore, the proposed solicitations are for gifts to the agency rather than gifts to an employee of the agency. *See* Tex. Ethics Comm'n Op. 62 (1992), 31 (1992).

Whether an agency may solicit or accept gifts is not governed by Chapter 36 of the Penal Code or Chapter 305 of the Government Code (related to lobbying). Tex. Ethics Comm'n Ops. 62, 31. Instead, it is governed by other law specifically applicable to that agency, over which the Ethics Commission has no interpretive authority. Tex. Ethics Comm'n Op. 62 (1992), 31 (1992); Tex. Att'y Gen. Op. JM-684 (1987), JH-1180 (1978) (regarding statutory authority of state agencies to accept gifts).

DRAFT

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Where must candidates for an appraisal district's board of directors file campaign treasurer appointments and campaign finance reports? (*AORs-699, 701*).

SUMMARY

A candidate for an appraisal district's board of directors must file campaign treasurer appointments and campaign finance reports with the clerk or secretary of the appraisal district. If the appraisal district does not have a clerk or secretary, the reports must be filed with the appraisal district's presiding officer.

FACTS

An appraisal district is a political subdivision of the state, responsible for appraising property in the district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district. Tex. Tax Code § 6.01. The 88th Legislature, during its second special session, added election requirements to appraisal district board of directors in a county with population of 75,000 or more. Acts 2023, 88th Leg., 2nd C.S., Ch. 1 (S.B. 2), Sec. 5.03, (codified at Tex. Tax Code § 6.0301).

Under the newly passed legislation, an appraisal district in a county with a population of 75,000 or more is governed by a board of nine directors. The board is composed of both appointed and elected directors. Three directors are elected by majority vote at the general election for state and county officers by the voters of the county in which the district is established.

The commission has received several questions from appraisal districts, county clerks, and candidates, including two formal advisory opinion requests regarding the proper filing authority for candidates for an appraisal district board of directors.

ANALYSIS

The law generally requires a candidate to file their campaign treasurer appointment with the unit of government to which they are seeking election. Tex. Elec. Code. § 252.005. For an individual seeking elective office of a political subdivision, campaign finance reports are filed with "the

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clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer.” *Id.*

Campaign finance reports are filed by candidates, officeholders, or specific-purpose committees supporting a candidate or officeholder with the same filing authority the treasurer appointment is filed. Tex. Elec. Code §§ 254.066, .097, .130.

“An appraisal district is a political subdivision of the state,” distinct from a county. Tex. Tax Code § 6.01(c).

Since a candidate for elective office of a political subdivision office files campaign treasurer appointments and campaign finance reports with the political subdivision, and an appraisal district is a political subdivision, a candidate for an appraisal district’s board of directors files his or her campaign treasurer appointments and campaign finance reports with the appraisal district.

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ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether the purchase of a storage trailer is a normal overhead, administrative, or operating cost of a political party such that contributions from a corporation may be accepted and used for its purchase. (AOR-700).

SUMMARY

The political party may use contributions from corporations to purchase a storage trailer because the trailer is a normal overhead cost.

FACTS

The requestor represents a county political party. She asks whether a county political party may accept contributions from a corporation to purchase a storage trailer that will be used to store “campaign and other political party items.”

ANALYSIS

The law allows a political party to accept corporate or labor contributions¹ for limited purposes. Tex. Elec. Code § 253.104. A political party may use contributions from a corporation only to: “(1) defray normal overhead and administrative or operating costs incurred by the party; or (2) administer a primary election or convention held by the party.” *Id.* § 257.002(a).

The phrase “normal overhead and administrative or operating costs” covers “items such as expenditures for office space, utilities, and other usual costs of operating an organization.” Tex. Ethics Op. No. 272 (1995).

“Overhead” is not defined in statute but is generally known to mean “business expenses (such as rent, insurance, or heating) not chargeable to a particular part of the work or product.” Merriam-Webster.com Dictionary, “Overhead.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/overhead>. Accessed 20 Feb. 2024.

¹ The requestor asked about the permissibility of a political party accepting contributions from a corporation. For that reason we will refer only to corporate contributions. However, the restrictions applicable to a political party’s acceptance and use of corporate contributions applies equally to contributions from a labor organization.

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In Advisory Opinion No. 176, the TEC opined that purchasing a permanent party headquarters is a normal overhead expense for which corporate contributions may be used. Tex. Ethics Comm'n Op. No. 176 (1993). However, costs associated with the printing and distribution of brochures soliciting donations to and membership in the party is not a "normal overhead and administrative or operating cost." Tex. Ethics Comm'n Op. No. 272 (1995). The key distinction is whether the expense is attributable to general ongoing operational costs as opposed to spending more directly attributable to expenditures advocating in connection with an election. *See id.*

A permanent storage trailer to hold the various items owned by a political party is akin to a party's headquarters. The use of a storage space for the various items a political party accumulates fits squarely within the definition of "overhead" in that it is not directly attributable to a single activity of the party. This is true regardless of whether the party chooses to lease temporary storage space or purchase a trailer or some other more permanent storage solution. Therefore, the party may use contributions from corporations to purchase a storage trailer.

We note certain conditions apply to the timing and manner of a political party's acceptance of corporate contributions. Corporate contributions must be maintained in a separate account. *Id.* § 257.002(b). The party must file reports of contributions to and expenditures from this separate account as if the party chairman were the campaign treasurer of a political committee and as if the contributions or expenditures were political contributions or expenditures. *Id.* § 257.003. The party may not accept corporate contributions or use corporate contributions during the period beginning on the 60th day before the date of the general election for state and county officers and continuing through the day of the election. *Id.* § 257.004(a).

The political party may use contributions from corporations to purchase a storage trailer used for general storage of the party's items provided they abide by the provisions generally applicable to the acceptance of corporate money by a political party.

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ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a state university may provide prizes to randomly selected attendees of sporting events under Chapter 36 of the Penal Code when the recipient of the prize may be a university employee. (*AOR-702*).

SUMMARY

Under the facts presented, providing prizes to attendees of sporting events would not be prohibited by Chapter 36 of the Penal Code even if a university employee receives a prize after being selected at random.

FACTS

The requestor represents a state university's athletic department. During breaks at sporting events the university conducts "mini games" that can result in the participant receiving a prize, such as a \$100 gift card. The participants are chosen randomly from the spectators by the athletic department's interns. The spectators could include university employees or students who in turn could be chosen for the games. However, enrollment as a student or employment status is not a condition of being selected and not determined at any time during the selection process or event.

The requestor asks whether providing gifts to a university employee or student would be prohibited by Chapter 36 of the Texas Penal Code.

ANALYSIS

In our opinion, Chapter 36 of the Penal Code would not prohibit a university from providing small gifts to a university employee for participating in a mini game at a sporting event provided the employee is selected randomly and without respect to his or her employment status.¹

Chapter 36 of the Penal Code contains a number of prohibitions against public servants accepting benefits from persons subject to their jurisdiction, absent exception. Tex. Penal Code § 36.08. For example, section 36.08(a) prohibits a public servant from accepting a benefit from a person

¹ The provision of a gift to a student as proposed in this opinion would not implicate the Penal Code because a person's status as a student, standing alone, does not make them a "public servant." Tex. Penal Code. § 1.07(a)(41).

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the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

It is possible that a university employee in attendance may have oversight over the athletic department of the university. *See* Tex. Ethics Op. Nos. 118 (1993) (Section 36.08(a) could apply even when the gift giver and recipient are in the same agency); 100 (1992) (“Whether a state employee may accept a prize depends on the nature, value, and context of the prize.”). However, even if Section 36.08(a) could be implicated by a certain gifts to a university employee, it would not prohibit such a gift under these facts. This is because 36.08 does not apply to a “gift or other benefit conferred on account of . . . business relationship independent of the official status of the recipient.” Tex. Penal Code § 36.10(a)(2).

The requestor states the participants are chosen randomly from attendees of sporting events. The ticket for entry to the sporting event creates a business relationship independent of the official status of potential university employee in attendance. So long as the participants are chosen randomly, or without respect to employment status, any prize given for participation in a “mini game” would be based on an independent business relationship.