

PROPOSED RULES

At its March 2024, meeting, the Texas Ethics Commission voted to propose the following amended and repealed rules: §§6.1 regarding Definitions (amended), 6.5 regarding Authority to Adopt Rules (repealed), 6.7 regarding Actions That Require Six Votes (repealed), 6.9 regarding Computation of Time (amended), 6.21 regarding Officers of the Commission (amended), 6.23 regarding Commission Staff (amended), 6.31 regarding Quorum (repealed), 6.33 regarding Frequency of Meetings (repealed), 6.35 regarding Called Meetings (amended), 6.39 regarding Meeting Agenda (amended), 6.43 regarding Speakers Addressing the Commission (amended), 6.45 regarding Order and Conduct of Commission Meeting (amended) and 6.47 regarding Tape Recording of Meeting; Minutes (amended). The text of the proposed amended rules are located below.

At its March 2024, meeting, the Texas Ethics Commission also voted to propose repealing all of the existing rules in Chapter 12, regarding Sworn Complaints, and replacing them with the following proposed new subchapters, divisions and rules: 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, 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, 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, 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, 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, Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §§12.51 regarding Conduct and Decorum, 12.52 regarding Private Deliberations, and 12.53 regarding Record of Rulings, 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, 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, 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, and 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. The text of the proposed new subchapters, divisions and rules are located below.

At its March 2024, meeting, the Texas Ethics Commission also proposed amendments to Texas Ethics Commission Rules in Chapter 26. Specifically, the Commission proposed amendments to §26.1, regarding Disclosure Statement. The text of the proposed new subchapters, divisions and rules are located below.

Summary of Proposed Rules, in English

At its March 2024, meeting, the TEC voted to propose the following amended and repealed rules: § 6.7 (amended), all of Chapter 12 (existing rules will be fully repealed and an entire new chapter will be proposed, concurrently), and § 26.1 (amended). The text of the proposed amended, repealed and new rules are located below.

Chapters 6 and 12: 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 its organization and administration (codified in Chapter 6) and its sworn complaint procedures (codified as Chapter 12). The amendments seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity.

26.1: Political advertising generally needs to indicate the name of the person who paid for it, or if authorized by a candidate or committee, the candidate or committee who authorized it. By rule, the TEC created an exception from the political advertising disclosure requirement for most social media posts where “the person posting or re-posting” did not make an expenditure exceeding \$100 in a reporting period for the post. The existing rule largely exempts social media posts from the disclosure statement requirement unless money is spent for the social media site to carry the post as an ad or to promote the post to increase its reach. *Id.* The existing rule focuses on “the person posting or re-posting” making an expenditure paying to boost the post. But it does clearly address a situation where the person posting is being paid. The amendment to the rule would narrow the exception to existing law—not add a substantive requirement that is not already found in statute.

Resumen de las Reglas Propuestas, en español:

En su reunión de marzo del 2024, la Comisión de Ética de Texas (TEC por sus siglas en inglés) votó para proponer las siguientes reglas enmendadas y derogadas: § 6.7 (enmendada), todo el Capítulo 12 (las reglas existentes se derogarán totalmente y se propondrá un nuevo capítulo completo, al mismo tiempo), y § 26.1 (enmendado). El texto de las leyes enmendadas, derogadas y nuevas que se han propuesto se encuentra a continuación.

Los capítulos 6 y 12: La ley estatal requiere que las agencias estatales “revisen y consideren cada una de sus reglas para una nueva adaptación... a no más tardar que del cuarto aniversario de la fecha en la cual la regla entró en vigor y cada cuatro años después de esa fecha.” El Código Gubernamental de Texas § 2001.039. Además, la ley requiere que las agencias “re-adopten, re-adopten con enmiendas o revoquen la regla como resultado de la revisión de la ley basada en esta sección.” *Id.* El personal de TEC empezó una revisión comprensiva de sus reglas tocante su organización y administración (codificada en el Capítulo 6) y sus procedimientos para denuncias juradas (codificados en el Capítulo 12). Las enmiendas buscan achicar, simplificar y reorganizar las reglas para eliminar lo sobrante y mejorar la claridad.

26.1: El anuncio político generalmente necesita indicar el nombre de la persona quien lo pagó, o si está autorizado por un candidato o comité, debe indicar el candidato o el comité quien lo autorizó. Por regla, el TEC (por sus siglas en inglés) creó una excepción del requerimiento de revelar quién pagó el anuncio político en la mayoría de los posteos sociales donde “la persona que postea o lo postea de nuevo” no pagó más de \$100 durante el periodo establecido para reportar el mensaje. Esta regla existente a grandes rasgos exenta los posteos de los medios sociales del requerimiento de revelación del patrocinador excepto en el caso que se pague dinero por el sitio del medio social para colocar el posteo como un anuncio o para promover el posteo para incrementar su alcance de lectores. *Id.* La regla existente enfoca “la persona que postea o postea de nuevo” quien pague por tener mejor alcance de lectores. Sin embargo, no claramente abarca la situación donde a la persona que postea se le paga por la acción. La enmienda a la regla haría más estrecha la excepción a la ley existente -- no aumentar un requerimiento sustantivo que no se encuentre en el estatuto.

§6.1. Definitions

[Text of Proposed Amended Rule](#)

§6.9. Computation of Time

[Text of Proposed Amended Rule](#)

§6.21. Officers of the Commission

[Text of Proposed Amended Rule](#)

§6.23. Commission Staff

[Text of Proposed Amended Rule](#)

§6.35. Called Meetings

[Text of Proposed Amended Rule](#)

§6.39. Meeting Agenda

[Text of Proposed Amended Rule](#)

§6.43. Speakers Addressing the Commission

[Text of Proposed Amended Rule](#)

§6.45. Order and Conduct of Commission Meeting
[Text of Proposed Amended Rule](#)

§6.47. Tape Recording of Meeting
[Text of Proposed Amended Rule](#)

§12.01. Notice
[Text of Proposed New Rule](#)

§12.02. Representation by Counsel
[Text of Proposed New Rule](#)

§12.03. *Ex Parte* Communications
[Text of Proposed New Rule](#)

§12.04. Agreements to be in Writing
[Text of Proposed New Rule](#)

§12.11. Deadline for Filing a Complaint
[Text of Proposed New Rule](#)

§12.12. File Date for a Complaint
[Text of Proposed New Rule](#)

§12.13. Description of Violation
[Text of Proposed New Rule](#)

§12.14. Statement of Facts
[Text of Proposed New Rule](#)

§12.15. Commission Initiated Complaint
[Text of Proposed New Rule](#)

§12.21. Response to Notice of Complaint
[Text of Proposed New Rule](#)

§12.22. Written Questions
[Text of Proposed New Rule](#)

§12.23. Production of Documents During Preliminary Review
[Text of Proposed New Rule](#)

§12.24. Proposed Settlement Before Preliminary Review Hearing
[Text of Proposed New Rule](#)

§12.25. Subpoenas Issued by Commission
[Text of Proposed New Rule](#)

§12.26. Subpoenas Issued by Counsel for the Respondent
[Text of Proposed New Rule](#)

§12.31. Purpose and Effect of Motions
[Text of Proposed New Rule](#)

§12.32. Required Form of Motions
[Text of Proposed New Rule](#)

§12.33. Certificate of Conference
[Text of Proposed New Rule](#)

§12.34. Motion Deadlines
[Text of Proposed New Rule](#)

§12.35. Method of Filing
[Text of Proposed New Rule](#)

§12.36. Service of Documents
[Text of Proposed New Rule](#)

§12.37. Non-conforming Documents
[Text of Proposed New Rule](#)

§12.38. Amended and Supplemental Filings
[Text of Proposed New Rule](#)

§12.39. Application of this Subchapter
[Text of Proposed New Rule](#)

§12.41. Motion to Extend Time
[Text of Proposed New Rule](#)

§12.42. Motion for Continuance
[Text of Proposed New Rule](#)

§12.43. Motion to Dismiss
[Text of Proposed New Rule](#)

§12.44. Motion for Summary Disposition
[Text of Proposed New Rule](#)

§12.45. Motion for Sanctions

[**Text of Proposed New Rule**](#)

§12.51. Conduct and Decorum

[**Text of Proposed New Rule**](#)

§12.52. Private Deliberations

[**Text of Proposed New Rule**](#)

§12.53. Record of Rulings

[**Text of Proposed New Rule**](#)

§12.61. Selection and Delegation of Presiding Officer

[**Text of Proposed New Rule**](#)

§12.62. Set Hearing

[**Text of Proposed New Rule**](#)

§12.63. Consolidate or Sever Matters for Hearing

[**Text of Proposed New Rule**](#)

§12.64. Conduct Hearings

[**Text of Proposed New Rule**](#)

§12.65. Rule of Evidentiary Matters

[**Text of Proposed New Rule**](#)

§12.66. Sign Orders and Subpoenas

[**Text of Proposed New Rule**](#)

§12.71. Notice of Preliminary Review Hearing

[**Text of Proposed New Rule**](#)

§12.72. Preliminary Review Hearing

[**Text of Proposed New Rule**](#)

§12.81. Order of Formal Hearing

[**Text of Proposed New Rule**](#)

§12.82. Notice of Formal Hearing

[**Text of Proposed New Rule**](#)

§12.83. Formal Hearing: Venue

[**Text of Proposed New Rule**](#)

§12.84. Presentation of Evidence

[**Text of Proposed New Rule**](#)

§12.85. Rules of Evidence
Text of Proposed New Rule

§12.86. Number of Exhibits
Text of Proposed New Rule

§12.91. Agreed Resolutions
Text of Proposed New Rule

§12.92. Resolution of Technical or De Minimis Allegations
Text of Proposed New Rule

§12.93. Default Proceedings
Text of Proposed New Rule

§12.94. Final Orders After Formal Hearings
Text of Proposed New Rule

§26.1. Disclosure Statement
Text of Proposed New Rule

§6.1. Definitions
Text of Proposed Amended Rule

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter A. General Rules

The proposed new language is indicated by underlined text.

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

§6.1. Definitions.

The following words and terms, when used in this Ppart, 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.

~~(940) 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

Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

§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.

§6.21. Officers of the Commission

Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter B. Officers and Employees of the Commission

§6.21. Officers of the Commission.

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

(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 partiesy-caucus lists.

(cd) The chair and vice chairpresiding officer may be re-elected; however, if a new chairpresiding officer is elected he or she 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 chair-presiding 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 chair~~presiding officer may appoint a commissioner as presiding officer~~chair~~ 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 fulfill their duties under this Part and any other applicable law.

§6.23. Commission Staff

Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

The deleted language is indicated by ~~strike through~~ text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter B. Officers and Employees of the Commission

§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~~title 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.

§6.35. Called Meetings
Text of Proposed Amended Rule

The deleted language is indicated by [strikethrough] text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

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
Text of Proposed Amended Rule

The deleted language is indicated by [strikethrough] text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter C. Commission Meetings

§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
Text of Proposed Amended Rule**

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter C. Commission Meetings

§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
Text of Proposed Amended Rule

The deleted language is indicated by [strikethrough] text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter C. Commission Meetings

§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. Recording of Meeting; Minutes
Text of Proposed Amended Rule

The deleted language is indicated by [strikethrough] text.

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter C. Commission Meetings

§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.

§12.01. Notice
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter A. Respondent's Rights

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter A. Respondent's Rights

§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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter A. Respondent's Rights

§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.

**§12.11. Deadline for Filing a Complaint
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter B. Filing and Initial Processing of 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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter B. Filing and Initial Processing of Complaint

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter B. Filing and Initial Processing of Complaint

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter B. Filing and Initial Processing of Complaint

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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.

**§12.21. Response to Notice of Complaint
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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 Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter C. Investigation and Discovery

§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.

§12.31. Purpose and Effect of Motions
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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 Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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 the Subchapter
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 1: General Rules

§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.

§12.41. Motion to Extend Time
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 2: Types of Motions

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 2: Types of Motions

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 2: Types of Motions

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter D. Pleadings and Motions

Division 2: Types of Motions

§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.

§12.51. Conduct and Decorum **Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 1: General Rules

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 1: General Rules

§12.53. Record of Rulings

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

**§12.61. Selection and Delegation of Presiding Officer
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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 Hearing
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 2: Powers of the Presiding Officer

§12.62. Set Hearing

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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 2: Powers of the Presiding Officer

§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 Hearing
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 2: Powers of the Presiding Officer

§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 of Evidentiary Matters
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 2: Powers of the Presiding Officer

§12.65. Rule of Evidentiary Matters

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

§12.66. Sign Orders and Subpoenas
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 2: Powers of the Presiding Officer

§12.66. Sign Orders and Subpoenas

The presiding officer may sign previously approved subpoenas and orders.

**§12.71. Notice of Preliminary Review Hearing
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 3: Preliminary Review Hearings

§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.

**§12.81. Order of Formal Hearing
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 4: Formal Hearings

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 4: Formal Hearings

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 4: Formal 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
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 4: Formal Hearings

§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. Number of Exhibits
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter E. Hearings

Division 4: Formal Hearings

§12.86. Number 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.

§12.91. Agreed Resolutions **Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter F. Resolutions

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter F. Resolutions

§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
Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter F. Resolutions

§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.

§26.1. Disclosure Statement.
Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

The deleted language is indicated by [~~strike through~~] text.

CHAPTER 26. POLITICAL ADVERTISING

§ 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
- (4) political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that:
 - (i) contains the disclosure statement; or
 - (ii) is exempt from containing the disclosure statement under Subsection (c)(3).

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

At its June 2024, meeting, the Texas Ethics Commission voted to propose the following amended and repealed rule: §18.31, regarding adjustments to reporting thresholds. The text of the proposed amended rule is located below.

At its June 2024, meeting, the TEC also voted to re-propose the following amended and repealed rules: §§ 6.5, 6.7, 6.31 and 6.33 (repeal), §§ 6.1, 6.9, 6.21, 6.23, 6.35, 6.39, 6.43, 6.45 and 6.47 (amended), and all of Chapter 12 (existing rules will be fully repealed and an entire new chapter will be proposed, concurrently). The text of the proposed amended, repealed and new rules are located below.

Summary of Proposed Rules, in English

Section 571.064(b) of the Government Code requires the TEC to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the TEC's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller). The TEC first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2025, to apply to contributions and expenditures that occur on or after that date.

Chapters 6 and 12: 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 its organization and administration (codified in Chapter 6) and its sworn complaint procedures (codified as Chapter 12). The amendments seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity. At the June 2024 meeting, the Commission received comments from Mr. Ross Fischer on possible changes to § 12.71(a), regarding the Notice of Preliminary Hearing. Changes have been made to that subsection based on that discussion.

Resumen de las Reglas Propuestas, en español:

En su reunión de junio del 2024, la Comisión de Ética de Texas (TEC por sus siglas en inglés) votó para proponer las siguientes reglas enmendadas: § 18.31, en relación con los ajustes a los umbrales de presentación de informes.

En la junta de junio del 2024, la Comisión de Ética de Texas (TEC por sus siglas en inglés) también votó a no proponer de nuevo las siguientes reglas enmendadas y revocadas: §§ 6.5, 6.7, 6.31 y 6.33 (revocadas), §§ 6.1, 6.9, 6.21, 6.23, 6.35, 6.39, 6.43, 6.45 y 6.47 (enmendadas), y todo del Capítulo 12 (las reglas existentes serán totalmente derogadas y un capítulo nuevo entero será propuesto,

simultáneamente.) El texto de las nuevas reglas propuestas, de las enmendadas y de las revocadas, se encuentran a continuación.

Resumen de las Reglas Propuestas, en español

Anualmente la Sección 571.064(b) del Código Gubernamental requiere que la Comisión de Ética de Texas (TEC por sus siglas en inglés) suba los topes de las cantidades declaradas al múltiplo más próximo de \$10 de acuerdo con el incremento en el porcentaje del año anterior del Índice del Precio del Consumidor para los Consumidores Urbanos, el cual se publica por medio de la Oficina de Estadísticas del Trabajo del Departamento del Trabajo de los Estados Unidos. Las leyes bajo la autoridad de la TEC que incluyen los topes de las cantidades declaradas son: el Título 15 del Código de Elecciones (la ley que gobierna las finanzas de campañas), el Capítulo 305 del Código Gubernamental (la ley del cabildeo), el Capítulo 572 del Código Gubernamental (los estados de cuentas financieras personales), los Capítulos 302 y 303 del Código Gubernamental (los reportes de la elección del presidente de la cámara de representantes, del gobernador por un día y del día de ceremonia de la reunión del presidente de la cámara de representantes), y la Sección 2155.003 del Código Gubernamental (los requerimientos para el contralor sobre el reporte). La TEC adoptó los ajustes por primera vez en los topes de las cantidades declaradas en 2019, los cuales entraron en vigor el 1 de enero del 2020. Estos nuevos ajustes, si son adoptados, entrarán en vigor el 1o. de enero del 2025 para ser aplicados a las contribuciones y los gastos que ocurren en dicha fecha o después de tal fecha.

Los Capítulos 6 y 12 : La ley estatal requiere que las agencias estatales “revisen y consideren la readaptación de cada una de sus reglas... no más tarde del cuarto aniversario de la fecha en la cual la regla toma efecto y cada cuatro años después de esa fecha.” Código del Gobierno Tejano § 2001.039. La ley además requiere que las agencias “re-adopten, re-adopten con enmiendas o derogen una regla como el resultado de revisar la regla bajo esta sección.” Citado anteriormente. El personal de TEC empezó su revisión comprensiva con las reglas de TEC relacionadas con su organización y administración (codificadas en el Capítulo 6) y sus procedimientos para quejas juramentadas. (codificadas como el Capítulo 12) Las enmiendas buscan acortar, simplificar y reorganizar las reglas para eliminar el excedente y mejorar la claridad. En la junta de junio del 2024, la Comisión recibió comentarios del Sr. Ross Fischer sobre posibles cambios a la sección §12.71(a), relacionados con el Aviso de la Audiencia Preliminar. Se han hecho cambios a esa subsección basados en esa discusión.

§18.31. Adjustments to Reporting Thresholds Text of Proposed Amended Rule

Chapter 6. Organization and Administration Text of Proposed Repealed and Amended Rules

Chapter 12. Sworn Complaints. Text of Proposed New Rules

§18.31. Adjustments to Reporting Thresholds
Text of Proposed Amended Rule

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

Chapter 18. GENERAL RULES CONCERNING REPORTS

§18.31. Adjustments to Reporting Thresholds.

- (a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Figure 1: 1 TAC §18.31(a).

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	PAC: Amount of contributions or expenditures permitted before TA is required	\$500	<u>\$1,080</u> [\$1,050]
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	\$25,000	<u>\$40,300</u> [\$38,990]
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	\$500	<u>\$1,110</u> [\$1,080]
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	\$100	\$220
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	\$500	<u>\$1,110</u> [\$1,080]
254.031(a)(1)	Contributions: Threshold over which more information is required	\$50	\$110
254.031(a)(2)	Loans: Threshold over which more information is required	\$50	\$110
254.031(a)(3)	Expenditures: Threshold over which more information is required	\$100	\$220
254.031(a)(5)	Contributions: Threshold at or below which more information is not required	\$50	\$110
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required	\$100	\$220
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required	\$100	\$140

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported	\$100	\$140
254.031(a)(11)	Investment Gain: Threshold over which more information is required	\$100	\$140
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	\$100	\$140
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required	\$50	\$110
254.0311(b)(2)	Caucus, loans: Threshold over which more information is required	\$50	\$110
254.0311(b)(3)	Caucus, expenditures: Threshold over which more information is required	\$50	\$110
254.0311(b)(4)	Caucus, contributions and expenditures: Threshold at or below which more information is not required	\$50	\$110
254.0312	Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance	\$500	<u>\$850</u> [\$820]
254.036	Electronic Filing Exemption: Threshold at or below which a filer may qualify	\$20,000	<u>\$33,910</u> [\$32,810]
254.038(a)	Daily Reports by certain candidates and PACs: Contribution threshold triggering report	\$1,000	<u>\$2,220</u> [\$2,150]
254.039	Daily Reports by GPACs: Contribution threshold triggering report	\$5,000	<u>\$7,600</u> [\$7,350]
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates)	\$1,000/\$15,000	<u>\$2,220/\$33,370</u> [\$2,150/\$32,280]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required	\$50	\$110
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required	\$500	<u>\$1,110</u> [\$1,080]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required	\$500	<u>\$1,110</u> [\$1,080]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.095	Local officeholders, contributions: Threshold under which reporting is not required	\$500	<u>\$1,110</u> [\$1,080]
254.151(6)	GPAC, contributions: Threshold over which more information is required	\$50	\$110
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies	\$20,000	<u>\$32,240</u> [\$31,190]
254.1541(b)	GPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$100	\$220
254.156(1)	MPAC: Threshold over which contribution, lender and expenditure information is required	\$10	\$20
254.156(2)	MPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$20	\$40
254.181 254.182 254.183	Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports	\$500	<u>\$1,110</u> [\$1,080]
254.261	DCE filers: Threshold over which a report must be filed	\$100	\$160

Figure 2: 1 TAC §18.31(a).

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Lobbyist, expenditures: Threshold over which registration is required	\$500, by 1 Tex. Admin. Code §34.41	<u>\$970</u> [\$940]
305.003(2)	Lobbyist, compensation: Threshold over which registration is required	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,930</u> [\$1,870]
305.004(7)	Lobbying for political party: Threshold at or below which registration is not required	\$5,000	<u>\$11,120</u> [\$10,760]
305.005(g)(2)	Lobbyist: Compensation threshold	\$10,000	<u>Less than \$22,240</u> [Less than \$21,520]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(3)	Lobbyist: Compensation threshold	\$25,000	<u>\$22,240 to less than \$55,610</u> [\$21,520 to less than \$53,810]
305.005(g)(4)	Lobbyist: Compensation threshold	\$50,000	<u>\$55,610 to less than \$111,220</u> [\$53,810 to less than \$107,610]
305.005(g)(5)	Lobbyist: Compensation threshold	\$100,000	<u>\$111,220 to less than \$222,440</u> [\$107,610 to less than \$215,230]
305.005(g)(6)	Lobbyist: Compensation threshold	\$150,000	<u>\$222,440 to less than \$333,660</u> [\$215,230 to less than \$322,840]
305.005(g)(7)	Lobbyist: Compensation threshold	\$200,000	<u>\$333,660 to less than \$444,880</u> [\$322,840 to less than \$430,450]
305.005(g)(8)	Lobbyist: Compensation threshold	\$250,000	<u>\$444,880 to less than \$556,100</u> [\$430,450 to less than \$538,070]
305.005(g)(9)	Lobbyist: Compensation threshold	\$300,000	<u>\$556,100 to less than \$667,320</u> [\$538,070 to less than \$645,680]
305.005(g)(10)	Lobbyist: Compensation threshold	\$350,000	<u>\$667,320 to less than \$778,540</u> [\$645,680 to less than \$753,290]
305.005(g)(11)	Lobbyist: Compensation threshold	\$400,000	<u>\$778,540 to less than \$889,760</u> [\$753,290 to less than \$860,910]
305.005(g)(12)	Lobbyist: Compensation threshold	\$450,000	<u>\$889,760 to less than \$1,000,980</u>

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
			[\$860,910 to less than \$968,520]
305.005(g)(13)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,000,980 to less than \$1,112,200</u> [\$968,520 to less than \$1,076,130]
305.005(g-1)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,112,200 or more</u> [\$1,076,130 or more]
305.0061(c)(3)	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed	\$50	\$110
305.0061(e-1)	Lobbyist, food and beverage: Threshold at or below which it is considered a gift and reported as such	\$50	\$110
305.0063	Lobbyist, annual filer: Expenditure threshold at or below which filer may file annually	\$1,000	<u>\$2,220</u> [\$2,150]

Figure 3: 1 TAC §18.31(a).

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold	less than \$5,000	less than <u>\$11,120</u> [\$10,760]
572.022(a)(2)	PFS threshold	\$5,000 to less than \$10,000	<u>\$11,120</u> [\$10,760] to less than <u>\$22,240</u> [\$21,520]
572.022(a)(3)	PFS threshold	\$10,000 to less than \$25,000	<u>\$22,240</u> [\$21,520] to less than <u>\$55,610</u> [\$53,810]
572.022(a)(4)	PFS threshold	\$25,000 or more	<u>\$55,610</u> [\$53,810] or more

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.005, 572.023(b)(1)	PFS, retainer: Threshold over which filer with a substantial interest in a business entity must report more information	\$25,000	<u>\$55,610</u> [\$53,810]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: Threshold over which information must be reported	\$500	<u>\$1,110</u> [\$1,080]
572.023(b)(5)	PFS, loans: Threshold over which information must be reported	\$1,000	<u>\$2,220</u> [\$2,150]
572.023(b)(7)	PFS, gifts: Threshold over which information must be reported	\$250	<u>\$560</u> [\$540]
572.023(b)(8)	PFS, income from trust: Threshold over which information must be reported	\$500	<u>\$1,110</u> [\$1,080]
572.023(b)(15)	PFS, government contracts: Threshold of aggregate over which more information must be reported	Exceeds \$10,000	Exceeds <u>\$12,210</u> [\$11,810]
572.023(b)(15)(A)	PFS, government contracts: Itemization threshold	\$2,500 or more	<u>\$3,050</u> [\$2,950] or more
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold	less than \$5,000	less than <u>\$6,100</u> [\$5,910]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,100</u> [\$5,910] but less than <u>\$12,210</u> [\$11,810]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,210</u> [\$11,810] but less than <u>\$30,520</u> [\$29,530]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold	\$25,000 or more	<u>\$30,520</u> [\$29,530] or more
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold	less than \$5,000	less than <u>\$6,100</u> [\$5,910]
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,100</u> [\$5,910] but less than <u>\$12,210</u> [\$11,810]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,210</u> [\$11,810] but less than <u>\$30,520</u> [\$29,530]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold	\$25,000 or more	<u>\$30,520</u> [\$29,530] or more

Figure 4: 1 TAC §18.31(a).

Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Current Threshold Amount	Adjusted Amount
302.014(4)	Speaker: Expenditures over which more information must be reported	\$10	\$20
303.005(a)(1) – (10)	Governor for a Day/Speaker’s Day: Threshold over which more information must be reported	\$50	\$110

Figure 5: 1 TAC §18.31(a).

Thresholds set by Title 1, Part 2, Tex. Admin. Code	Threshold Type	Original [Current] Threshold Amount	Adjusted Amount
20.62(a)	Staff Reimbursement	\$5,000	\$7,300 [\$7,060]
20.220	Comptroller: Additional disclosure	\$500	\$720 [\$710]

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

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

(d) In this section:

- (1) “CEC” means county executive committee;
- (2) “DCE” means direct campaign expenditure-only filer;
- (3) “GPAC” means general-purpose political committee;
- (4) “MPAC” means monthly-filing general-purpose political committee;
- (5) “PAC” means political committee;
- (6) “PFS” means personal financial statement;

- (7) “SPAC” means specific-purpose political committee; and
- (8) “TA” means treasurer appointment.

Chapter 6. Organization and Administration

Text of Proposed Repealed and Amended Rules

~~§6.5. Authority To Adopt Rules.~~

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

~~§6.7. Actions That Require Six Votes.~~

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

- ~~(1) to adopt a rule to administer any law administered and enforced by the commission;~~
- ~~(2) to render any decision on a complaint or a report of a violation as provided by the Government Code, Chapter 571 (concerning Texas Ethics Commission), other than a final decision after a formal hearing that a violation has not occurred, which requires only five votes;~~
- ~~(3) to prohibit participation by a member of the commission in commission proceedings relating to the investigation, complaint, or motion;~~
- ~~(4) without a sworn complaint, to initiate a preliminary review of an alleged violation of a law administered or enforced by the commission;~~
- ~~(5) to subpoena and examine witnesses and documents that directly relate to a sworn complaint and issue a written request to a peace officer to serve a subpoena of the commission in the manner prescribed for service of a district court subpoena;~~
- ~~(6) to order and perform a complete audit at an informal or formal hearing of a sworn complaint or commission-initiated complaint; and~~
- ~~(7) to initiate civil enforcement actions and refer matters to the appropriate prosecuting attorney for criminal prosecution.~~

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

~~§6.31. Quorum.~~

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

~~§6.33. Frequency of Meetings.~~

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

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).]~~
- (~~7~~[8]) 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]~~.
- (~~8~~[9]) Individual--A human being who has been born and is alive.
- (~~9~~[10]) 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)]~~.
- (~~10~~[11]) Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).
- (~~11~~[12]) Open Records Law--The Government Code, Chapter 552 (concerning Open Records).
- (~~12~~[13]) Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

(~~13~~¹⁴) 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).]~~

(~~14~~¹⁶) Report--Any document or other information required to be filed under this title.

(~~15~~¹⁷) Staff--Employees of the commission, hired by the commission or the executive director.

(~~16~~¹⁸) 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.]~~

~~(a)~~(b)) 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.

~~(b)~~(e)) The chair~~[presiding officer]~~ and vice chair~~[the vice-presiding officer]~~ shall be members of ~~[elected from]~~ different political parties~~y caucus lists~~.

~~(c)~~(d)) The chair and vice chair~~[presiding officer]~~ may be re-elected; however, if a new chair~~[presiding officer]~~ is elected he or she~~[it]~~ should be a member of ~~[from]~~ a different political party~~[caucus list]~~ than the former chair~~[presiding officer]~~.

(d[e]) 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 chair[-presiding officer] shall perform all duties of the presiding officer when the chair is absent.

(e[f]) In addition to other powers identified elsewhere in this Part, t[F]he presiding officer may perform the following actions of the commission:

(1) Sign previously approved subpoenas and orders;

(2) Schedule hearings and meetings; and

(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.]

(f[g]) The chair[presiding officer] may appoint a commissioner as presiding officer[chair] 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 fulfill 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[title] 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.

Chapter 12. Sworn Complaints.
Text of Proposed New Rules
CHAPTER 12. SWORN COMPLAINTS

Subchapter A. Respondents' 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.

Subchapter B. FILING AND INITIAL PROCESSING OF 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.

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.

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.

Division 2 – Types of Motions

§12.41. Motion to Extend Time

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

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

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

(2) the specific reason for the request; and

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

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

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

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

§12.42. Motion for Continuance

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

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

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

(2) the specific reason for the request; and

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

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

good cause has been demonstrated, the presiding officer may consider a motion filed after that time.

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

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

(2) the date and time of the proceeding.

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

§12.43. Motion to Dismiss

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

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

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

§12.44. Motion for Summary Disposition

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

(b) Unless otherwise ordered by the presiding officer:

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

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

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

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

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

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

(d) Responses to motions.

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

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

(e) Summary disposition evidence.

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

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

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

(f) Proceedings on motions.

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

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

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

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

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

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

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

§12.45. Motion for Sanctions

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

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

(A) in bad faith;

(B) for the purpose of harassment; or

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

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

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

(4) violating §12.51 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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.

Division 3 – Preliminary Review Hearings

§12.71. Notice of Preliminary Review Hearing

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

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

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

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

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

§12.72. Preliminary Review Hearing

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

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

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.

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.

At its September 2024, meeting, the Texas Ethics Commission voted to propose the following amended and new rules: §40.2 regarding Disclosure of Financial Activity, §40.3 regarding PFS Required for Each Year of Service, §40.5 regarding Assets and Liabilities of Business Associations, §40.9 regarding Exchange Traded Funds and Real Estate Investment Trusts, §40.11 regarding Publicly Traded Corporation as Source of Income, §40.13 regarding Beneficial Interest in Real Property Includes Real Property Held in a Trust, §40.15 regarding Identification of the Source of Rents Derived from Rental Property, and §50.1 regarding Legislative Per Diem. The text of the proposed amended and new rules are located below.

Summary of Proposed Rules, in English

Chapter 40: These amendments and new rules are intended to clarify the requirements of a personal financial statements filed under Chapter 572 of the Government Code and to make sure the reporting requirements are consistent with state law.

Chapter 50.1: The Texas Constitution requires the TEC to set the per diem to which members of the legislature and the lieutenant governor are entitled for each day during each regular and special session of the Legislature. Tex. Const. art. III, §§24(a), 24a(e). The rule as amended would set the per diem for members of the legislature and the lieutenant governor at \$267 for each day during the regular session and any special session. The rate is equal to set for a per diem in Austin, Texas for a federal employee by the General Services Administration.

Resumen de las Reglas Propuestas, en español:

Capítulo 40: Estas enmiendas y las reglas nuevas tienen la intención de clarificar los requisitos de los estados de cuentas financieros personales que se sometieron bajo el Capítulo 572 del Código Gubernamental y para asegurar que los requerimientos del reporte son consistentes con la ley estatal.

Capítulo 50.1: La Constitución de Texas requiere que la Comisión de Ética de Texas (TEC por sus siglas en inglés) fije el costo por día, el cual los miembros de la legislatura y el vicegobernador son elegibles por cada día durante la sesión regular y especial de la Legislatura de Texas. El Artículo III, §§24(a), 24a(e) de la Constitución de Texas. La regla como está enmendada fijaría la cuota diaria para los miembros de la legislatura y el vicegobernador a \$267 por cada día durante la sesión regular y cualquier sesión especial de la Legislatura de Texas.

§40.2. Disclosure of Financial Activity Text of Proposed Amended Rule

§40.3. PFS Required for Each Year of Service Text of Proposed New Rule

§40.5. Assets and Liabilities of Business Associations Text of Proposed New Rule

§40.9. Exchange Traded Funds and Real Estate Investment Trusts
Text of Proposed New Rule

§40.11. Publicly Traded Corporation as Source of Income
Text of Proposed Amended Rule

§40.13. Beneficial Interest in Real Property Includes Real Property Held in a Trust
Text of Proposed New Rule

§40.15. Identification of the Source of Rents Derived from Rental Property
Text of Proposed New Rule

§50.1. Legislative Per Diem
Text of Proposed Amended Rule

§§40.2. through 40.15.
Text of Proposed Amended and New Rules

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

Chapter 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

§40.2. Disclosure of Financial Activity.

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

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

§40.3. PFS Required for Each Year of Service.

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

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

Comments: For example, under subsection 40.3(a) of this section, if a state officer ceases to be a state officer in October 2024, the state officer is required to file a PFS in by the deadline provided

by §572.026(a) of the Government Code in calendar year 2025, covering financial activity that occurred through October 2024, provided the state officer does not holdover.

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

§40.5. Assets and Liabilities of Business Associations.

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

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

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

§40.11. Publicly Traded Corporation as Source of Income [over \$500].

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

§40.13. Beneficial Interest in Real Property Includes Real Property Held in a Trust.

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

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

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

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

§50.1. Legislative Per Diem Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

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

Chapter 50. LEGISLATIVE SALARIES AND PER DIEM

§50.1. Legislative Per Diem.

(a) The legislative per diem is \$267 [~~\$221~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$267 [~~\$221~~] per diem for 2025 [~~2019~~].

At its December 2024, meeting, the Texas Ethics Commission voted to propose the following repealed, amended and new rules: §§ 8.3 regarding Subject of an Advisory Opinion, 8.5 regarding Persons Eligible to Receive an Advisory Opinion, 8.11 regarding Review and Processing of a Request, 8.17 regarding Request Answered by Written Response, 8.18 regarding No Defense to Prosecution or Civil Penalty, 8.21 regarding Compilation of Advisory Opinions, 13.1 regarding Referral to Prosecuting Attorney, and 20.1(17) regarding the definition of “principal purpose”. The text of the proposed repealed, amended and new rules are located below.

Summary of Proposed Rules, in English

Chapter 8: These amended and repealed rules are intended to clarify the requirements for requesting an advisory opinion under Chapter 571 of the Government Code and to make sure the requirements are consistent with state law.

13.1: This new rule is being proposed in response to the CCA's recent decision in *Ex Parte Charette*, which held that a referral from the TEC is a jurisdictional prerequisite to the bringing of criminal charges against a political candidate for campaign-law violations. The purpose of this rule is to provide information regarding the TEC's procedures for making criminal referrals as authorized by Section 571.171(a) of the Texas Government Code.

20.1(17): A group is generally a political committee if it has a principal purpose of making campaign expenditures or accepting campaign contributions. The TEC proposes amending the definition of “principal purpose” to determine whether a group is a political committee. This amended rule avoids a bright-line approach based on a percentage of spending. Instead, it embraces the Federal Election Commission method of determining whether a group is a political committee by taking a holistic view of the group’s activity to be adjudicated on a case-by-case basis. Adopting the FEC approach will also allow the TEC and regulated community to more easily use the precedent set by FEC adjudications and federal court decisions to determine whether a group is a political committee.

Resumen de las Reglas propuestas, en Inglés

Capítulo 8: Estas reglas enmendadas o revocadas tienen la intención de aclarar los requerimientos para pedir una opinión consultiva bajo el Capítulo 571 del Código Gubernamental y para asegurar que los requerimientos sean consistentes con la ley estatal.

13.1: Esta nueva regla se propone como respuesta a la reciente decisión de CCA en *Ex Parte Charette*, la cual mantuvo que una referencia de la TEC es un prerrequisito judicial para levantar cargos criminales en contra de un candidato político por violaciones de las leyes de campaña política. El propósito de esta regla es proveer información relacionada con los procedimientos de la TEC para reportar a los criminales de acuerdo con la autorización de la Sección 571.171(a) del Código Gubernamental de Texas.

20.1(17): Un grupo es generalmente un comité político si tiene el propósito principal de hacer gastos de campaña política o aceptar contribuciones para una campaña política. La TEC propone enmendar la definición de “un propósito principal” para determinar si un grupo es un comité político. Esta regla enmendada evita un enfoque de criterio claro (bright line approach) basado en

el porcentaje de sus gastos. Al contrario, adopta el método de la Comisión Federal de Elecciones (FEC, por sus siglas en inglés) para determinar si un grupo es un comité político, al tomar una perspectiva holística de las actividades del grupo que serán juzgadas caso por caso. Adoptar el enfoque de la FEC también permitirá a la TEC y a la comunidad regulada utilizar más fácilmente los precedentes establecidos por las resoluciones de la FEC y las decisiones de los tribunales federales para determinar si un grupo es un comité político.

**§8.3. Subject of an Advisory Opinion.
Text of Proposed Amended Rule**

**§8.5. Persons Eligible to Receive an Advisory Opinion.
Text of Proposed Amended Rule**

**§8.11. Review and Processing of a Request.
Text of Proposed Amended Rule**

**§8.17. Request Answered by Written Response.
Text of Proposed Repealed Rule**

**§8.18. No Defense to Prosecution or Civil Penalty.
Text of Proposed Amended Rule**

**§8.21. Compilation of Advisory Opinions.
Text of Proposed Amended Rule**

**§13.1. Referral to Prosecuting Attorney.
Text of Proposed New Rule**

**§20.1(17). Definitions.
Text of Proposed Amended Rule**

**§§8.3. through 8.21.
Text of Proposed Amended and Repealed Rules**

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

Chapter 8. ADVISORY OPINIONS

§8.3. Subject of an Advisory Opinion.

~~[(a) The commission may only issue a written advisory opinion on the application of any of the following laws:~~

- ~~(1) Government Code, Chapter 302 (concerning Speaker of the House of Representatives);~~
- ~~(2) Government Code, Chapter 303 (concerning Governor for a Day and Speaker's Reunion Day Ceremonies);~~
- ~~(3) Government Code, Chapter 305 (concerning Registration of Lobbyists);~~
- ~~(4) Government Code, Chapter 572 (concerning Personal Financial Disclosure, Standards of Conduct, and Conflict of Interest); (5) Government Code, Chapter 2004 (concerning Representation Before State Agencies);~~
- ~~(6) Local Government Code, Chapter 159, Subchapter C, in connection with a county judicial officer, as defined by Section 159.051, Local Government Code, who elects to file a financial statement with the commission;~~
- ~~(7) Election Code, Title 15 (concerning Regulating Political Funds and Campaigns);~~
- ~~(8) Penal Code, Chapter 36 (concerning Bribery and Corrupt Influence);~~
- ~~(9) Penal Code, Chapter 39 (concerning Abuse of Office).~~
- ~~(10) Government Code, §2152.064 (concerning Conflict of Interest in Certain Transactions); and~~
- ~~(11) Government Code, §2155.003 (concerning Conflict of Interest).]~~

~~[(b)] (a)~~ The commission may not issue an advisory opinion that concerns the ~~[subject matter]~~ same or substantially similar facts of pending litigation known to the commission.

~~[(c)] (b)~~ For purposes of this section, the term litigation includes a sworn complaint proceeding before the commission ~~[only if the Government Code Subchapters C-H, Chapter 2001, applies to the proceeding]~~ if the request is made by a respondent or complainant or the agent of a respondent or complainant of pending sworn complaint.

~~[(d)] (c)~~ An advisory opinion cannot resolve a disputed question of fact.

§8.5. Persons Eligible To Receive an Advisory Opinion.

A person who is subject to one of the laws described in ~~[\$8.3(a) of this chapter (relating to Subject of Advisory Opinions)]~~ §571.091, Gov't Code may request an opinion that advises how the law applies to that person in a specific real or hypothetical factual situation. Opinions may only address how the law applies to the requestor, not any other real or hypothetical person.

§8.11. Review and Processing of a Request.

(a) Upon receipt of a written request for an advisory opinion, the executive director shall determine whether the request:

- (1) pertains to the application of a law specified under ~~[\$8.3 of this chapter]~~ §571.091, Gov't Code;

(2) meets the standing requirements of §8.5 of this chapter; and

(3) meets the form requirements of §8.7 of this chapter. ~~[-and]~~

~~[(4) cannot be answered by written response under § 8.17 of this chapter by reference to the plain language of a statute, commission rule, or advisory opinion.]~~

(b) If the executive director determines that a request for an opinion meets the requirements of this chapter as set forth in subsections (a)(1)-(3) of this ~~[section and that the request cannot be answered by written response under §8.17 of this chapter]~~, the executive director shall assign an AOR number to the request. The executive director shall notify the person making the request of the AOR number and of the proposed wording of the question to be answered by the commission.

(c) If the executive director determines that a request for an opinion does not meet the requirements of this chapter as set forth in subsections (a)(1)-(3) of this section ~~[or that the request can be answered by written response under §8.17 of this chapter]~~, the executive director shall notify the person making the request of the reason the person making the request is not entitled to an advisory opinion in response to the request.

(d) A person who requests an opinion may withdraw the request prior to its inclusion on a meeting agenda filed by the Commission pursuant to the Open Meetings Law. Once a request is included on such an agenda, it may not be withdrawn by the requestor.

(e) The executive director may submit written questions to the requestor to clarify the real or hypothetical facts submitted with the request.

(f) The executive director may invite comments regarding an advisory opinion request from individuals or entities that may have expertise or an interest in the subject of the request.

~~§8.17. Request Answered by Written Response.~~

~~If the executive director determines that a request can be answered by reference to the plain language of a statute, commission rule, or advisory opinion:~~

~~(1) the executive director shall provide a written response to the person making the request that cites the language of the statute, rule, or advisory opinion, as applicable; and~~

~~(2) the person making the request is not entitled to an advisory opinion in response to the request.]~~

§8.18. No Defense to Prosecution or Civil Penalty.

A person who requests an advisory opinion does not obtain a defense to prosecution or to imposition of a civil penalty by requesting the opinion if any of the following apply:

(1) the commission is not authorized to answer the request because it does not pertain to the application of a law specified under ~~§8.3 of this chapter~~ §571.091, Gov't Code;

(2) the request does not meet the standing requirements of §8.5 of this chapter; or

(3) the request does not meet the form requirements of §8.7 of this chapter.~~[- or]~~

~~[(4) the executive director responds to the request by written response under §8.17 of this chapter.]~~

§8.21. Compilation of Advisory Opinions.

The executive director shall number and categorize each advisory opinion issued and publish the opinion on the commission's website. ~~[and shall annually compile a summary of advisory opinions in a single reference document.]~~ The executive director may publish and provide copies of advisory opinions in other formats as may be in the public interest.

§13.1. Referral to Prosecuting Attorney. Text of Proposed New Rule

The proposed new language is indicated by underlined text.

Chapter 13. REFERRALS TO PROSECUTORS.

§13.1. Referral to Prosecuting Attorney.

(a) Under section 571.171 of the Government Code, the commission may vote to refer a matter related to a sworn complaint to the appropriate prosecuting attorney for criminal prosecution upon the commission accepting jurisdiction over the sworn complaint.

(b) A referral under subsection (a) of this section shall be delayed in accordance with section 571.134 of the Government Code.

§20.1. Definitions. Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

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

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

Subchapter A. GENERAL RULES.

§20.1. Definitions.

(1) – (16) – (No change.)

(17) Principal purpose --A group has as a principal purpose of accepting political contributions or making political expenditures, including direct campaign expenditures, when that activity is an important or a main function of the group.

(A) A group may have more than one principal purpose. When determining whether a group has a principal purpose of accepting political contributions or making political contributions, the Commission may consider the full range of activities by the group and its members, including, but not limited to:

(i) public statements;

(ii) fundraising appeals;

(iii) government filings;

(iv) organizational documents; and

(v) the amount of political expenditures made and political contributions accepted by the group and its members.

~~(B) [A group has as a principal purpose accepting political contributions if the proportion of the political contributions to the total contributions to the group is more than 25 percent within a calendar year. A contributor intends to make a political contribution if the solicitations that prompted the contribution or the statements made by the contributor about the contribution would lead to no other reasonable conclusion than that the contribution was intended to be a political contribution.]~~ A group is presumed to be a political committee if the proportion of the group's political contributions to the total contributions to the group is 50 percent or more.

(C) The group may maintain specific evidence of contributions related only to political contributions or only to nonpolitical contributions. For example, the group may ask the contributor to make an indication when the contribution is made that the contribution is only a nonpolitical contribution.

~~(D) [A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year.]~~ A group is presumed to be a political committee if the proportion of the group's political expenditures to the total expenditures of the group is 50 percent or more. The following shall be included for purposes of calculating the ~~[threshold]~~ proportion of a group's political expenditures to all other spending:

(i) the amount of money paid in compensation and benefits to the group's employees for work related to making political expenditures;

(ii) the amount of money spent on political expenditures; and

(iii) the amount of money attributable to the proportional share of administrative expenses related to political expenditures. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) with nonpolitical expenditures.

(For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue-based newsletters and the third is a direct advocacy sample ballot, and there were no other [outside] expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include:

(I) fees for services to non-employees;

(II) advertising and promotion;

(III) office expenses;

(IV) information technology;

(V) occupancy;

(VI) travel expenses;

(VII) interest; and

(VIII) insurance

(E) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion established by subparagraph (D)(iii) but allocated by the actual amount of the expense.

(F) In this section, the term "political expenditures" includes direct campaign expenditures.

(18) – (23) – (No change.)