



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 647

September 23, 2026

ISSUE

Whether communications and appearances while representing an intervening party during judicial review of an agency order constitute prohibited communications to or appearances before the agency's officers or employees by a former member of the governing body of the agency. (AOR-751)

SUMMARY

Representing an intervening party in judicial review proceedings necessarily requires communication with TCEQ personnel despite directing all advocacy to the reviewing court. Because the requestor's communications and representations before a court are with the intent to influence and are in connection to a matter on which the represented party and the TCEQ seek official action, the requestor's representation of an intervening party before the two-year communication prohibition would violate Section 572.054(a).

FACTS

Requestor is a former commissioner of the Texas Commission on Environmental Quality (TCEQ). Requestor seeks to represent an intervenor party in state district court and appellate courts on judicial review of final TCEQ actions, including its permitting decisions, and further seeks to influence a court's decision.

Requestor states that when TCEQ is served with a petition for judicial review, the agency refers the matter to the Texas Attorney General's Office (OAG) to defend agency actions. Requestor asserts that the representation would involve communicating with OAG attorneys and appearing before the court without any need to communicate with TCEQ officers or employees. Requestor further contends that because TCEQ is an OAG client, the Texas Disciplinary Rules of Professional Conduct bar direct communication with TCEQ. *See* Tex. Disciplinary Rules Prof'l Conduct R. 4.02, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, App. A-1. 4.02. Requestor also notes that judicial review is conducted on a closed record and that all advocacy is directed to the reviewing court, which serves as the ultimate decision-maker, not TCEQ.

ANALYSIS

Requestor is subject to Tex. Gov't Code § 572.054(a).

For the purposes of the request, this advisory opinion assumes the requestor, as a commissioner for TCEQ, did not participate in the matter being litigated.

Under Section 572.054(a), the requestor, a former TCEQ commissioner, is prohibited from making any communication to or appearing before TCEQ officers and employees before the second anniversary of the date the requestor ceased to be a commissioner for TCEQ if the communication is made (1) with the intent to influence; and (2) on behalf of any person in connection with any matter on which the person seeks official action. Tex. Gov't Code § 572.054(a)(1–2).

In this instance, the requestor expects to communicate only with OAG and not with TCEQ personnel. In addition, requestor acknowledges that Rule 4.02(a) prohibits communication between the requestor and TCEQ personnel unless the requestor has the consent of the other lawyer or is legally authorized to do so. Tex. Disciplinary Rules Prof'l Conduct R. 4.02(a). However, limiting communications to the lawyers representing the TCEQ does not insulate the requestor from the two-year restriction.

An attorney fundamentally acts as an agent for the client. *See Link v. Wabash R.R.*, 370 U.S. 626, 633-34 (1962); *The Lawyer as Agent*, 67 Fordham Law Review 301 at 302 (“the lawyer-client relationship is a commonsensical illustration of agency.”). The lawyers representing the TCEQ act on its behalf. As an agent of the TCEQ, communications to its lawyers are indistinguishable from communications to its employees or officers for purposes of Section 574.054(a).

Regardless, even though here, the court, not the TCEQ, is the ultimate decision maker on the matter, TCEQ officers or employees could be present before the court in which the requestor communicates and advocates to. *Cf.* Tex. Ethics Comm'n Op. No. 637 (2022). Although the requestor does not seek to communicate with TCEQ officers or employees, the requestor's communications to the court would be with the intent to influence and on behalf of another in connection with the matter in which TCEQ seeks official action. Any motion, or brief, submitted as an intervenor would inherently be intended to be persuasive and may require TCEQ to alter their own arguments to address the requestor's assertions or settle the matter in favor of the requestor's client. As such, any communication or appearances in this manner made before the statutory two-year revolving door period would violate Section 572.054(a).

Therefore, a former TCEQ commissioner's communications to and appearances while representing an intervening party before a court for judicial review of final TCEQ actions constitute prohibited communications or appearances under Section 572.054(a).