

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

Randall H. Erben, Chair
Chris Flood, Vice Chair
Sean Gorman
Patrick W. Mizell

Geanie W. Morrison
Richard S. Schmidt
Joseph O. Slovacek
Mark Strama

MEETING AGENDA

Date and Time: 9:00 a.m., Tuesday, March 11, 2025
Location: Room E1.014, Capitol Extension, Austin, Texas

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

https://www.ethics.state.tx.us/meetings/meetings_2025-2029.php#2029

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Section 551.074, Government Code, Personnel Matters, Closed Meeting.**
 - A. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court, Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; Cause No. 03-21-00033, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas; and Cause No. 24-803, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the U.S. Supreme Court.
 - ii. Cause No. D-1-GN-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court, Travis County, Texas; and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
 - iii. Case No. 4:23-cv-00808-P, *Institute for Free Speech, a nonprofit corporation and public interest law firm, vs. J.R. Johnson in his official and individual capacities as Executive Director of the Texas Ethics*

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

Commission; Mary Kennedy, Chris Flood, and Richard Schmidt in their official capacities as commissioners of the Texas Ethics Commission; and Randall Erben, Chad Craycraft, Patrick Mizell, Joseph Slovacek, and Steven Wolens, in their individual and official capacities as commissioners of the Texas Ethics Commission, in the U.S. District Court for the Northern District of Texas, Fort Worth Division.

- iv. Cause No. PD-0310-23, *Ex Parte John Morgan Stafford*, in the Texas Court of Criminal Appeals.
 - v. Cause No. D-1-GN-23-008068, *In re Christopher Paddie*, in the District Court for the 419th Judicial District Court, Travis County, Texas.
 - vi. Cause No. 22-CV-1130, *Matt Wiggins v. Texas Ethics Commission*, in the 122nd Judicial District Court, Galveston County, Texas.
 - vii. Cause No. 2023-DCL-01478, *Valleywide Pharmacy and DMI, Inc., vs. Texas Ethics Commission, by and through its Executive Director, J.R. Johnson, in his official capacity*, in the 445th Judicial District Court, Cameron County, Texas.
 - viii. Civil Action 1:24-CV-500, *LIA Network v. J.R. Johnson, in his official capacity as Executive Director of the Texas Ethics Commission, et al.*, in the United States District Court for the Western District of Texas, Austin Division.
 - ix. Cause No. 2024-DCL-03953, *Ruben Cortez, Jr. v. Texas Ethics Commission*, in the 404th Judicial District Court, Cameron County, Texas.
 - x. Cause Nos. PD-0522-21, PD-0523-21, PD-0524-21, & PD-0525-21, *Ex Parte Robbie Gail Charette*, in the Court of Criminal Appeals of Texas.
- B. Discussion of contemplated litigation and to seek legal advice regarding the collection of imposed penalties.
- C. Discussion to seek legal advice regarding Chapter 104 of the Texas Civil Practices and Remedies Code and possible action regarding the purchase of directors' and officers' liability insurance.
- D. Discussion to seek legal advice and about anticipated litigation regarding 1 Tex. Admin Code § 20.1(17) and Tex. Elec. Code § 251.001(12).
- E. Discussion to seek legal advice and about anticipated litigation regarding section 571.1242(g) of the Government Code.
- F. Discussion and possible action related to personnel matters.
- G. Reconvene in open session.
-

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3. Recess or continue to “Agenda 2” noticed for the same time and place as this agenda.

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

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1. Call to order; roll call.
2. Discussion regarding dates for future quarterly Commission meeting.
3. Approve minutes for the following meetings:
 - o Executive Session – December 3, 2024; and
 - o Public Agenda – December 3, 2024.

RULEMAKING

Rule Adoption

4. Discussion and possible action on the adoption or proposal and publication in the Texas Register of rules and policies related to referrals to prosecuting attorneys. Chapter 13, Title 1, Texas Administrative Code.
5. Discussion and possible action on the adoption or proposal and publication in the Texas Register regarding amendments to Chapter 8 of the TEC Rules, related to Advisory Opinions.
6. Discussion and possible action on the adoption or proposal and publication in the Texas Register regarding amendments to 1 Tex. Admin. Code § 20.1(17), relating to the principal purpose of a political committee.

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Rule Publication

7. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to Chapter 10 of the TEC Rules, related to Ethics Training Programs.
8. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to Chapter 16 of the TEC Rules, related to Facial Compliance Reviews and Audits.
9. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to Chapter 28 of the TEC Rules, related to Reports by a Candidate for Speaker of the House of Representatives.
10. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to Chapter 18, related to the process to request a waiver or reduction for a civil penalty imposed for a late report and civil penalties imposed for making a substantial correction to 8-day pre-election reports.
11. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to Chapter 12, related to sworn complaint procedures including default orders, proposed settlements before a preliminary review hearing, and discovery during a preliminary review or before a formal hearing.

ADVISORY OPINIONS

12. Advisory Opinion Request No. 703: Whether a particular communication is political advertising, as defined by Section 251.001(16) of the Election Code.

This opinion construes Section 251.001 of the Election Code and Subchapter D of Chapter 571 of the Government Code.
13. Advisory Opinion Request No. 709: Whether a member of the Texas House of Representatives may accept office space contributed by a Limited Liability Company (LLC)

Whether a member of the Texas House of Representatives may continue to use contributed office space for a district office through the moratorium on political contributions prescribed by Section 253.034 of the Election Code.

This opinion construes Sections 251.001(5) and 253.034 of Tex. Elec. Code.
14. AOR-719: Whether a state judge may use political contributions to travel to an event hosted by the United States Navy.

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

This opinion construes Section 253.035 of the Election Code.

15. Advisory Opinion Request No. 720: Whether the use of a corporate aircraft may be provided to members of the legislature to attend an event at which the legislators will address an audience and learn about issues facing the West Texas border region.

This opinion construes Chapter 36 of the Penal Code and Chapter 305 of the Government Code.

16. Advisory Opinion Request No. 721: At what moment does a particular permitting or enforcement matter come within the "official responsibility" of a TCEQ commissioner for purposes of the Section 572.054(b) revolving door prohibition?

Does a TCEQ commissioner "participate" in all matters for which a TCEQ investigation was conducted or an application/registration was received before the commissioner left office or only those matters that were presented to the commissioners for consideration?

This opinion construes Section 572.054(b) of the Government Code.

17. Advisory Opinion Request No. 722: Whether a part-time legislative staff member may accept outside employment assisting a registered lobbyist.

This opinion construes Chapters 36 and 39 of the Penal Code and Chapter 572 of the Government Code.

ADMINISTRATIVE WAIVER OF FINES, TREASURER TERMINATIONS AND REPORTS MORE THAN 30 DAYS LATE

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

Staff Recommendation: Waiver

- A. Duarte, Hilda (00086352)
- B. Raasch, Wayne (00066256)
- C. Smithee, John (00020664)

Staff Recommendation: Reduction

- D. Cox, Greg (87296)
- E. Gonzalez, Victoria (00086502)
- F. Litton, Todd C. (00088030)
- G. Lopez, Jose Aguilar (00057957)
- H. McFarland, Omar (00088158)

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

- I. Purnell, Clinton D. (00084030)

Staff Recommendation: No Further Reduction or Waiver

- J. Denson, Jane, Campaign Treasurer, Northeast Travis County Democrats (00056769)
 - K. Hebron, Duni, Campaign Treasurer, Black Women of Greater Houston PAC (00084977)
19. Discussion and possible action regarding the termination of a campaign treasurer appointment for the following inactive candidates and political committees:

Candidates

1. Betancourt, Johnny J. (00084361)
2. Brazeal, Brian (00087943)
3. Feuerstein, Joshua (00088353)
4. Gilani, Sohrab (00086428)
5. Hale, Eric J. (00088261)
6. Howell, Benjamin C. (00088247)
7. Martin, Luther Wayne, III (00088362)
8. Martinez, Jacinto (00084552)

Political Committees

9. 2023 Solidarity Convention PAC, Brian J. Talbot, Jr., Treasurer (00087075)
10. Brownsville Police Officers Association PAC, Juan G. Arellano, Treasurer (00016112)
11. Concerned Citizens Against Proposition A, Dana Burkett, Treasurer (00088001)
12. El Paso Community Power, Miguel Escoto, Treasurer (00088215)
13. Freedom and Liberty Conservatives PAC, Maureen Ball, Treasurer (00082537)
14. Friends of Good Government, Steve Klein, Treasurer (00085831)
15. Good Government Fort Worth, Travis Q. Parmer, Treasurer (00083564)
16. Harris Forward, Michael A. Kolenc, Treasurer (00087069)
17. Homeowner-Taxpayer Association of Bexar County, Inc. Political Action Committee, Janet Ahmad, Treasurer (00017147)
18. Houston Business-Education Coalition PAC, Adrian Patterson, Treasurer (00065928)
19. Law Enforcement Community Partnership, Nancy Morales, Treasurer (00087855)
20. Lone Star Improvement Fund, Taylor J. Major, Treasurer (00086875)
21. Northwest Family First, Nicole J. Donatelli, Treasurer (00087350)
22. Panhandle First, Kimberly Snelgrooes, Treasurer (00087989)
23. Six Pac, Irasema Gonzalez, Treasurer (00082766)
24. South San Community PAC, George Castillo, Jr., Treasurer (00080766)
25. Taking Back TX, Aubree Campbell, Treasurer (00088139)
26. Texas Alliance Oil and Gas PAC, Jo Ann Baker, Treasurer (00058143)

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

27. United Patriots PAC, Anthony Carpenter, Treasurer (00083796)
28. Vote NO, Aquilla ISD, Amy Hedtke, Treasurer (00088154)
29. Vote Yes for the SISD Bond, Michael Zweschper, Treasurer (00088022)

OTHER MATTERS

20. Briefing and discussion of legislation in the 2025 legislative session, including status of Ethics Commission legislative recommendations, the recommendations of the Sunset Advisory Commission, and discussion and possible action regarding improvements to the Commission's electronic filing software.
21. Discussion and possible appointment of a Nominating Committee of Commissioners for the positions of Chair and Vice Chair of the Texas Ethics Commission
22. Discussion and possible action related to planned renovations to the Sam Houston Building.
23. Adjourn.

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

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

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

Email address:

1 **Text of Proposed Rule Amendment**

2
3 The proposed new language is indicated by underlined text.

4
5 **CHAPTER 13. REFERRALS TO PROSECUTORS.**

6
7 **§ 13.1. Referral to Prosecuting Attorney.**

8
9 (a) Under section 571.171 of the Government Code, the commission may vote to
10 refer a matter related to a sworn complaint to the appropriate prosecuting attorney
11 for criminal prosecution upon the commission accepting jurisdiction over the
12 sworn complaint.

13
14 (b) A referral under subsection (a) shall be delayed in accordance with section 571.134
15 of the Government Code.

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3 **Text of Proposed Rules**
4

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

7
8 **Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND**
9 **EXPENDITURES.**

10
11 **Subchapter A. GENERAL RULES.**

12 **§ 20.1. Definitions.**

13 ...

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

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

21 (i) public statements;

22 (ii) fundraising appeals;

23 (iii) government filings;

24 (iv) organizational documents; and

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

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

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

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

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

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

50 (iii) the amount of money attributable to the proportional share of administrative
51 expenses related to political expenditures. The proportional share of administrative
52 expenses is calculated by comparing the political expenditures in clause (ii) with
53 nonpolitical expenditures. (For example, if the group sends three mailings a year
54 and each costs \$10,000, if the first two are issue-based newsletters and the third is
55 a direct advocacy sample ballot, and there were no other ~~outside~~ expenditures,
56 then the proportion of the administrative expenses attributable to political
57 expenditures would be 33%.) Administrative expenses include:

58 (I) fees for services to non-employees;

59 (II) advertising and promotion;

60 (III) office expenses;

61 (IV) information technology;

62 (V) occupancy;

63 (VI) travel expenses;

64 (VII) interest; and

65 (VIII) insurance

66 (E) The group may maintain specific evidence of administrative expenses related
67 only to political expenditures or only to nonpolitical expenditures. Specifically
68 identified administrative expenses shall not be included in the proportion

69 established by subparagraph (D)(iii) but allocated by the actual amount of the
70 expense.

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

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Text of Proposed Rules

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

CHAPTER 8. ADVISORY OPINIONS

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise: AOR number--An advisory opinion request file number assigned by the executive director to a pending advisory opinion request in accordance with this chapter.

§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).~~

32 ~~(10) Government Code, §2152.064 (concerning Conflict of Interest in Certain~~
33 ~~Transactions); and~~

34 ~~(11) Government Code, §2155.003 (concerning Conflict of Interest).]~~

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

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

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

44 **§8.5. Persons Eligible To Receive an Advisory Opinion.**

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

50 **§8.7. Request for an Advisory Opinion.**

51 (a) A request for an advisory opinion shall describe a specified factual situation. The
52 facts specified may be real or hypothetical. The request must provide sufficient detail
53 to permit the commission to provide a response to the request, including the name
54 of the person making the request and, if applicable, the name of the person on whose
55 behalf the request is made.

56 (b) A request for an advisory opinion shall be:

57 (1) in writing; and

58 (2) mailed or hand-delivered to the commission at the agency office or
59 emailed to the commission's email address designated for receiving requests.

60

61 **§8.9. Commission Initiated Opinion.**

62 When a majority of the commission determines that an opinion would be in the
63 public interest or in the interest of any person or persons within the jurisdiction of
64 the commission, the commission may on its own motion issue an advisory opinion.

65 **§8.11. Review and Processing of a Request.**

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

68 (1) pertains to the application of a law specified under [~~§8.3 of this chapter~~]
69 §571.091, Gov't Code;

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

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

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

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

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

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

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

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

95 **§8.13. Time Period.**

96 (a) The commission shall issue an advisory opinion in response to a request that
97 meets the requirements of this chapter not later than the 60th day after the date the
98 commission receives the request.

99 (b) The time available to issue an advisory opinion in response to a written request
100 is automatically extended for 60 days pursuant to §571.092(b), Government Code.

101 **§8.15. Publication in Texas Register; Comments.**

102 (a) Each request assigned an AOR number under this chapter shall be published in
103 summary form in the Texas Register.

104 (b) Any person may submit written comments to the commission concerning an
105 advisory opinion request. Comments submitted should reference the AOR number.

106 ~~**§8.17. Request Answered by Written Response.**~~

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

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

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

114 **§8.18. No Defense to Prosecution or Civil Penalty.**

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

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

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

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

125 [~~(4) the executive director responds to the request by written response under~~
126 ~~§8.17 of this chapter.]~~

127 **§8.19. Confidentiality.**

128 (a) The name of a person who requests an advisory opinion is confidential.

129 (b) The original request for an advisory opinion shall be placed in a confidential file.

130 (c) Confidentiality under subsection (a) of this section may be waived only if the
131 person making the request for an advisory opinion provides a verified, written
132 waiver of confidentiality to the executive director.

133 (d) If a request for a copy of an advisory opinion request is received, the executive
134 director shall prepare a redacted version of the advisory opinion request by deleting
135 any information that is likely to identify the person making the request. The redacted
136 version of the request shall be provided to the person who requested a copy of the
137 advisory opinion request.

138 **§8.21. Compilation of Advisory Opinions.**

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

1
2
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4

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8 **Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND**
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10
11 **Subchapter A. GENERAL RULES.**

12 **§ 20.1. Definitions.**

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

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44 expenditures to the total expenditures of the group is 50 percent or more. The
45 following shall be included for purposes of calculating the ~~threshold~~ proportion of
46 a group's political expenditures to all other spending:

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

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

50 (iii) the amount of money attributable to the proportional share of administrative
51 expenses related to political expenditures. The proportional share of administrative
52 expenses is calculated by comparing the political expenditures in clause (ii) with
53 nonpolitical expenditures. (For example, if the group sends three mailings a year
54 and each costs \$10,000, if the first two are issue-based newsletters and the third is
55 a direct advocacy sample ballot, and there were no other ~~outside~~ expenditures,
56 then the proportion of the administrative expenses attributable to political
57 expenditures would be 33%.) Administrative expenses include:

58 (I) fees for services to non-employees;

59 (II) advertising and promotion;

60 (III) office expenses;

61 (IV) information technology;

62 (V) occupancy;

63 (VI) travel expenses;

64 (VII) interest; and

65 (VIII) insurance

66 (E) The group may maintain specific evidence of administrative expenses related
67 only to political expenditures or only to nonpolitical expenditures. Specifically
68 identified administrative expenses shall not be included in the proportion

69 established by subparagraph (D)(iii) but allocated by the actual amount of the
70 expense.

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

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Text of Proposed Rules

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

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

Subchapter A. GENERAL RULES

§ 20.1. Definitions

...

(20) 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 any available evidence regarding the 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 does not have a principal purpose of making political expenditures if it can demonstrate that not more than 49% of its overall expenditures are political expenditures.

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

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

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

41 (iii) the amount of money attributable to the proportional share of administrative
42 expenses related to political expenditures. The proportional share of administrative
43 expenses is calculated by comparing the political expenditures in clause (ii) with
44 nonpolitical expenditures. (For example, if the group sends three mailings a year
45 and each costs \$10,000, if the first two are issue-based newsletters and the third is
46 a direct advocacy sample ballot, and there were no other ~~outside~~ expenditures,
47 then the proportion of the administrative expenses attributable to political
48 expenditures would be 33%.) Administrative expenses include:

49 (I) fees for services to non-employees;

50 (II) advertising and promotion;

51 (III) office expenses;

52 (IV) information technology;

53 (V) occupancy;

54 (VI) travel expenses;

55 (VII) interest; and

56 (VIII) insurance

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

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

1 **Text of Proposed Rules**

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3 The proposed new language is indicated by underlined text.

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

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TEXAS ETHICS COMMISSION RULES

6

CHAPTER 10. ETHICS TRAINING PROGRAMS

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§10.1. Training Programs.

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9 [~~Upon approval of the commission, t~~]The executive director shall establish a program to provide training relating to the laws administered and enforced by the commission and related laws for:

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(1) members and members-elect of the legislature, to be held by January of each odd-numbered year;

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(2) state employees, in cooperation with state agencies; and

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(3) other persons and officials whose conduct is regulated by laws administered and enforced by the commission and related laws.

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§10.3. Tuition Charges to Attendees of Training Programs.

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17 Upon approval of the commission, the executive director may establish tuition charges for persons who attend training programs under §10.1(3) of this title (relating to Training Programs) to recover costs of the training.

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1 **Text of Proposed Rules**

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3 The proposed new language is indicated by underlined text.

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

5

TEXAS ETHICS COMMISSION RULES

6

CHAPTER 28. REPORTS BY A CANDIDATE FOR SPEAKER OF THE HOUSE

7

OF REPRESENTATIVES

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§28.1. Definitions.

9

The following words and terms, when used in this Chapter 28, shall have the following meanings, unless the context clearly indicates otherwise:

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Campaign funds--For purposes of the Government Code, Chapter 302 (concerning Speaker of the House of Representatives), “campaign funds” as defined in §302.011 (concerning Definitions) shall include “interest earned” and shall include “interest paid.”

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§28.5. Information To Report.

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Each report required to be filed with the commission pursuant to the Government Code, §302.013 (concerning Filing of Statement of Contributions, Loans, and Expenditures), shall set forth the total amount of interest earned during the reporting period.

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§28.7. Permitted Expenditures.

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As required by the Government Code, §302.020 (concerning Permitted Expenditures), a speaker candidate shall not expend campaign funds for any purpose other than those permitted by §302.020 (concerning Permitted Expenditures), and then only if those expenditures are directly related to the speaker candidacy; provided, that this section is not intended to prohibit the payment from campaign funds of federal income taxes due on campaign funds.

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§28.9. Segregation of Campaign Funds.

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All contributed campaign funds shall be maintained in accounts separate and apart from any other accounts.

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1 **Text of Proposed Rules**

2 The proposed new language is indicated by underlined text.

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

4 **Chapter 18. GENERAL RULES CONCERNING REPORTS.**

5 **§18.10. Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-**
6 **election Report.**

7 (a) A corrected/amended 8-day pre-election report substantially complies with the applicable law
8 and will not be assessed a late fine under §18.9 of this title (relating to Corrected/Amended
9 Reports) if:

10 (1) The original report was filed in good faith and the corrected/amended report was filed
11 not later than the 14th business day after the date the filer learned of the errors or omissions; and

12 (2) The only corrections/amendments needed were to correct the following types of errors
13 or omissions:

14 (A) a technical, clerical, or de minimis error, including a typographical error, that
15 is not misleading and does not substantially affect disclosure;

16 (B) an error in or omission of information that is solely required for the
17 commission's administrative purposes, including a report type or filer identification
18 number;

19 (C) an error that is minor in context and that, upon correction/amendment, does
20 not result in changed monetary amounts or activity disclosed, including a descriptive
21 change or a change to the period covered by the report;

22 (D) one or more errors in disclosing contributions that, in total:

23 (i) do not exceed \$7,500~~[\$3,000]~~; or

24 (ii) do not exceed the lesser of 10% of the total contributions on the
25 corrected/amended report or \$20,000~~[\$10,000]~~;

26 (E) one or more errors in disclosing expenditures that, in total:

27 (i) do not exceed \$7,500~~[\$3,000]~~; or

28 (ii) do not exceed the lesser of 10% of the total expenditures on the
29 corrected/amended report or \$20,000~~[\$10,000]~~;

30 (F) one or more errors in disclosing loans that, in total:

31 (i) do not exceed \$7,500~~[\$3,000]~~; or

32 (ii) do not exceed the lesser of 10% of the amount originally disclosed or
33 \$20,000~~[\$10,000]~~; or

34 (G) an error in the amount of total contributions maintained that:

35 (i) does not exceed \$7,500~~[\$3,000]~~; or

36 (ii) does not exceed the lesser of 10% of the amount originally disclosed
37 or \$20,000~~[\$10,000]~~.

38 (H) The only correction/amendment by a candidate or officeholder was to add to
39 or delete from the outstanding loans total an amount of loans made from personal
40 funds;

41 (I) The only correction/amendment by a political committee was to add the name
42 of each candidate supported or opposed by the committee, when each name was
43 originally disclosed on the appropriate schedule for disclosing political
44 expenditures;

45 (J) The only correction/amendment was to disclose the actual amount of a
46 contribution or expenditure, when:

47 (i) the amount originally disclosed was an overestimation;

48 (ii) the difference between the originally disclosed amount and the actual
49 amount did not vary by more than the greater of \$7,500 or~~[\$3,000]~~ 10%; and

50 (iii) the original report clearly included an explanation of the estimated
51 amount disclosed and the filer's intention to file a correction/amendment as soon
52 as the actual amount was known; or

53 (K) The only correction/amendment was to delete a duplicate entry.

54 (b) If a corrected/amended 8-day pre-election report does not meet the substantial complies
55 criteria under subsection (a) the executive director shall determine whether there is reason to
56 believe the report was originally filed in bad-faith, with the purpose of evading disclosure, or
57 otherwise substantially defeated the purpose of disclosure and therefore was filed as of the date
58 of correction. [an 8-day pre-election report as originally filed substantially complies with
59 applicable law by applying the criteria provided in this section.]

60 (c) A filer may seek a waiver or reduction of a civil penalty assessed under this subsection as
61 provided for by this chapter.

62 (d)~~(e)~~ In this section, "8-day pre-election report" means a report due eight days before an
63 election filed in accordance with the requirements of §20.213(d), 20.325(e), or 20.425(d) of this
64 title (relating to a candidate, a specific-purpose committee, or a general-purpose committee,
65 respectively) and §254.064(c), 254.124(c), or 254.154(c) of the Election Code (relating to a
66 candidate, a specific-purpose committee, or a general-purpose committee, respectively).

67 **§18.21. Jurisdiction to Consider Waiver Request.**

68 (a) A filer may ask the commission to waive or reduce a civil penalty determined by §§ 305.033(b)
69 or 572.033(b) of the Government Code, or §254.042(b) of the Election Code by submitting a
70 written request to the Commission.

71 (b) The commission will not consider a request under subsection (a) of this section unless the filer,
72 not later than ~~60~~ 210 days after the report or statement was due:

73 (1) submits the request in the manner prescribed by subsection (a) of this section;

74 (2) files all reports owed to the commission; and (3) pays all outstanding civil penalties
75 owed to the commission that are not subject to a pending request for waiver or appeal.

76 (c) Upon a showing of good cause, the executive director may extend the deadline in
77 subsection (b) of this section.

78 **§18.24. General Guidelines for Administrative Waiver or Reduction of Statutory Civil**
79 **Penalties.**

80 (a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil
81 penalty under §§18.25 or 18.26 of this title (relating to Administrative Waiver or Reduction of
82 Certain Statutory Civil Penalties and Administrative Waiver or Reduction of Statutory Civil
83 Penalties in Excess of \$500 respectively), a “prior late offense” is any report for which a civil
84 penalty for late filing was assessed, regardless of whether the civil penalty was waived or reduced.
85 The term does not include:

86 (1) reports for which no late notices were sent and the filer did not file a request that the
87 civil penalty be waived or reduced for the prior late report; and

88 (2) reports determined by the executive director to be not required.

89 ~~[(b) A civil penalty that is reduced under §§18.25 or 18.26 of this title will revert to the full amount~~
90 ~~originally assessed if the reduced civil penalty is not paid within thirty (30) calendar days from the~~
91 ~~date of the letter informing the filer of the reduction.]~~

92 ~~(b)(e)~~ A filer may appeal a determination made under §§18.25 or 18.26 of this title by submitting
93 a request for appeal in writing to the commission within thirty (30) calendar days from the date of
94 the letter informing the filer of the decision.

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

98 (2) The Executive Director may review the appeal and reconsider the determination made
99 under §§18.25 or 18.26 of this title or set the appeal for a hearing before the commission.

100 (3) After hearing a request for appeal, the commission may affirm the determination made
101 under §§18.25 or 18.26 of this title or make a new determination based on facts presented in the
102 appeal.

1 **Text of Proposed Rules**

2

3 The proposed new language is indicated by underlined text.
4 The deleted language is indicated by [~~strike through~~] text.

5

Chapter 12: SWORN COMPLAINTS

6

Subchapter C. Investigation and Discovery

7

§12.21. Response to Notice of Complaint.

8

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

9

(1) be in writing;

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

11

(3) be signed by the respondent.

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~~[(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.]~~

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~~[(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.]~~

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§12.22. Written Questions.

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

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~~[(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.]~~

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§12.23. Production of Documents During Preliminary Review.

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~~[(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~~

30 commission to propose an agreement to the respondent or dismiss the complaint
31 (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date
32 the staff applies to the commission for the subpoena and resets on either:

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

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

36 (3) the date the commission receives a final ruling on a person's failure or refusal
37 to comply with a subpoena that is reported to a district court pursuant to section
38 571.137(e) of the Government Code.]

39 **§ 12.28 Discovery Control Plans, Application.**

40 (a) As determined by the Executive Director from available information, a sworn
41 complaint that appears to allege only technical or de minimis violations, as defined by
42 Section 12.92 of this chapter, is governed by a Level 1 discovery control plan. All other
43 sworn complaints are governed by a Level 2 discover control plan.

44 (b) Commission staff shall indicate in the written notice of a complaint provided to the
45 respondent under Section 571.123, Government Code, whether the complaint is governed
46 by a Level 1 or Level 2 discovery control plan

47 (c) The respondent or commission staff may file a motion requesting that the Executive
48 Director modify a discovery control plan from Level 1 to Level 2, or vice versa, if the
49 facts discovered after the initial determination of the Executive Director warrant the
50 modification.

51 (d) The Presiding Officer may issue an order modifying the discovery period or scope of
52 discovery for a sworn complaint.

53 (e) The terms "interrogatory," "request for admission," "deposition," and "request for
54 production" have the same meaning as applied in the Texas Rules of Civil Procedure,
55 except that an interrogatory and a request for admission is also considered a written
56 question for purposes of Section 571.1242(f) of the Government Code and Section
57 12.22(a) of this Chapter.

58 **12.30. Level 1 Discovery Control Plan**

59 (a) Discovery in a preliminary review under a Level 1 Discovery Control Plan is subject
60 to the limitation provided elsewhere in this Chapter and to the following additional
61 limitations:

62 (1) All discovery during a preliminary review must be conducted during the
63 discovery period which begins when the initial response to the complaint is due and
64 continues for 90 days.

65 (2) The discovery period reopens on the date the commission sets the matter for a
66 formal hearing and continues for an additional 90 days.

67 (3) During a preliminary review, the respondent and commission staff may serve
68 on any other party no more than 5 written interrogatories, excluding interrogatories
69 asking a party only to identify or authenticate specific documents. If set for a formal
70 hearing, each party may serve 10 more interrogatories. Each discrete subpart of an
71 interrogatory is considered a separate interrogatory.

72 (4) During a preliminary review, the respondent and commission staff may serve
73 on any other party no more than 5 written requests for production. If set for a formal
74 hearing, each party may serve 10 more written requests for production. Each discrete
75 subpart of a request for production is considered a separate request for production.

76 (5) During a preliminary review, the respondent and commission staff may serve
77 on any other party no more than 5 written requests for admissions. If set for a formal
78 hearing, each party may serve 10 more requests for admissions. Each discrete subpart of a
79 request for admission is considered a separate request for admission..

80 **12.32. Level 2 Discovery Control Plan**

81 (a) Discovery in a preliminary review under a Level 2 Discovery Control Plan is subject
82 to the limitation provided elsewhere in this Chapter and to the following additional
83 limitations:

84 (1) All discovery during a preliminary review must be conducted during the
85 discovery period which begins when the initial response to the complaint is due and
86 continues for 120 days.

87 (2) The discovery period reopens on the date the commission sets the matter for a
88 formal hearing and continues until the earlier of 30 days before a formal hearing or six
89 months after the conclusion the preliminary review hearing.

90 (3) During a preliminary review, the respondent and commission staff may serve
91 on any other party no more than 10 written interrogatories, excluding interrogatories
92 asking a party only to identify or authenticate specific documents. If set for a formal
93 hearing, each party may serve 15 more interrogatories. Each discrete subpart of an
94 interrogatory is considered a separate interrogatory.

95 (4) During a preliminary review, the respondent and commission staff may serve
96 on any other party no more than 10 written requests for production. If set for a formal

97 hearing, each party may serve 15 more written requests for production. Each discrete
98 subpart of a request for production is considered a separate request for production.

99 (5) During a preliminary review, the respondent and commission staff may serve
100 on any other party no more than 10 written requests for admissions. If set for a formal
101 hearing, each party may serve 15 more written requests for production. Each discrete
102 subpart of a request for admission is considered a separate request for admission.

103 (6) If set for a formal hearing, the respondent or commission staff may request that
104 the discovery control plan allow for the taking of depositions, consistent with and subject
105 to the limits provided by Chapter 2001 of the Government Code.

106 **12.34. Requests for Disclosure.**

107 (a) The discovery rules of the Texas Rules of Civil Procedure requiring initial disclosures
108 without awaiting a discovery request do not apply to sworn complaint proceedings,
109 except as may be ordered or allowed by the presiding officer.

110 (b) A party may request disclosure of documents or information that the opposing party
111 has in its possession, custody, or control, including, but not limited to, the following:

112 (1) the correct names of the parties to the contested case; the name, address, and
113 telephone number of any potential parties;

114 (2) a general description of the legal theories and the factual bases of the
115 responding party's claims or defenses, if not already set forth in the notice of complaint,
116 response to a complaint, or document filed in the record of the proceeding.

117 (3) the name, address, and telephone number of persons having knowledge of
118 relevant facts, and a brief statement of each identified person's connection with the case;
119 the statement of any person with knowledge of relevant facts (witness statement)
120 regardless of when the statement was made; and

121 (4) a copy, or description by category and location, of all documents, electronic
122 information, and tangible items that the disclosing party has in its possession, custody or
123 control and may use to support its claims or defenses, unless the use would be solely for
124 impeachment. A request for disclosure made pursuant to this subsection is not considered
125 a request for production.

1 **Text of Proposed Rules**

2
3 The proposed new language is indicated by underlined text.
4 The deleted language is indicated by [~~strike through~~] text.

5 **Chapter 12. SWORN COMPLAINTS**

6 **Subchapter F. RESOLUTIONS**

7 **§12.93. Default Proceedings.**

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

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

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

15 (2) the notice of hearing satisfies the requirements of sections 2001.051 and
16 2001.052 of the Government Code; and

17 (3) the notice of hearing was:

18 (A) received by the defaulting party; or

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

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

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

26 (e) A respondent may file a motion to set aside a default decision under this section.

27 (1) A motion to set aside a default decision under this section shall set forth the
28 grounds for reinstatement or rehearing and must be supported by affidavit of the movant
29 or their attorney that:

30 (A) the respondent had no notice of the hearing;

31 (B) the respondent had no notice of the consequences for failure to appear;

32 or

33 (C) although the respondent had notice, its failure to appear was not
34 intentional or the result of conscious indifference, but due to reasonable mistake or
35 accident that can be supported by adequate proof; and

36 (D) a statement of whether the motion is opposed.

37 (2) Whether or not the motion is opposed, the presiding officer may rule on the
38 motion without setting a hearing or may set a hearing to consider the motion. If the
39 presiding officer finds good cause for the respondent's failure to appear or file a response
40 to a complaint, the presiding officer shall vacate the default and reset the case for a hearing.
41 The presiding officer may also present the motion to set aside the default decision for a
42 vote of the commission at the next meeting of the commission after the motion was filed.
43 A motion to set aside a default decision is denied by operation of law if not ruled on by the
44 presiding officer or by vote of the commission at the next regular meeting of the
45 commission after the motion was filed.

46 (3) A motion to set aside a default decision must be filed not later than the 14th day
47 after the respondent received the default decision.

48 (4) A default decision is final:

49 (A) if a motion to set aside the default decision is not filed on time, on the
50 expiration of the period for filing a motion to set aside the default decision;

51 (B) if a motion to set aside the default decision is timely filed, on the date the
52 commission denies the motion.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a particular communication is political advertising, as defined by Section 251.001(16) of the Election Code. (AOR-703)

SUMMARY

The communication at issue is part of a series of communications that was the subject of litigation, which resulted in findings that substantially similar communications are political advertising for purposes of Section 255.003 of the Election Code. As such, and without taking a position on the merits, the TEC does not offer an affirmative defense to prosecution or civil action related to the communication at issue in this request.

ETHICS ADVISORY OPINION NO. 6xx

[DATE]

ISSUE

Whether a member of the Texas House of Representatives may accept office space contributed by a Limited Liability Company (LLC).

Whether a member of the Texas House of Representatives may continue to use contributed office space for a district office through the moratorium on political contributions prescribed by Section 253.034 of the Election Code. (AOR-709)

SUMMARY

A member of the Texas House of Representatives may accept the use of office space contributed by the LLC, provided the LLC is not engaged in a business specified by Section 253.093 and not owned in whole or in part by a corporation.

As long as the member accepts and receives a political contribution in the form of office space before the beginning of the legislative moratorium, the person may continue to use the office space during the period covered by the moratorium.

FACTS

The requestor is a member of the Texas House of Representatives who asks whether he may accept the donation of office space from an LLC. The requestor states that the office space would be used for official state business only and would not be used for campaign purposes.

ANALYSIS

Under the facts presented the donation of office space is an acceptable officeholder contribution.

As a general matter, a candidate or officeholder may accept a political contribution from an LLC, provided the LLC is not engaged in a business specified by Section 253.093 of Election Code and not owned in whole or in part by a corporation. Tex. Ethics Comm'n Op. No. 383 (1997).

The definition of "political contribution" includes an "officeholder contribution." Tex. Elec. Code § 251.001(5). An officeholder contribution is "a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that: A) are

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money.” *Id.* § 251.001(4).

The facts indicate that the contribution of office space would be used solely as a district office. Therefore the office space is not connected with a campaign, but is offered with the intent that it be used to defray costs associated with officeholder duties or activities. The donation of office space is therefore an officeholder contribution if it is “not reimbursable with public money.” *Id.* § 251.001(4).

“An expense incurred by an officeholder is reimbursable with public money if the respective governmental body has the authority to reimburse the officeholder for the expense and, at the time the expense is incurred, allows the reimbursement of the particular category of expense, such as continuing legal education.” Tex. Ethics Comm’n Op. No. 495 (2010).

The contribution of office space is an officeholder contribution because the costs incurred for a district office are not reimbursable to members of the house. Personnel Manual, Policies & Procedures of the Texas House of Representatives (Revised March 2023) (House Policy).

Each member is permitted to enter a lease for district office space which is paid directly by the House. But “[u]nder no circumstances may the Accounting Department reimburse the member for a district office rental payment made by the member.” House Policy at 51. Further, “[d]onated office space from a source other than a public entity is presumed to be an office holder contribution under Title 15, Election Code.” *Id.*

Since the donation of office space for a district office is an officeholder contribution, the member may accept the donated space from an LLC, provided the LLC is not engaged in a business specified by Section 253.093 of Election Code and not owned in whole or in part by a corporation

As long as the member accepts and receives a political contribution in the form of office space before the beginning of the legislative moratorium, the person may continue to use the office space during the period covered by the moratorium.

The requestor next asks whether the general prohibition on the acceptance of a political contribution during and following a regular legislative session would affect his ability to use the contributed office space as a district office.

During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment, a member of the legislature may not knowingly accept a political contribution and shall refuse a political contribution that is received during that time. Tex. Elec. Code § 253.034(b).

The question then is whether the use of office space during the legislative moratorium constitutes an acceptance of an in-kind political contribution during the legislative moratorium.

We addressed this precise question in Ethics Opinion No. 239 (1994) and held that as long as a person subject to section 253.034 of the Election Code accepts and receives a political

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contribution in the form of office space before the beginning of the legislative moratorium, the person may continue to use the office space during the period covered by the moratorium. Tex. Ethics Comm'n Op. No. 239 (1994). Members have relied on this unbroken precedent for the last thirty years. We see no reason to deviate from this long-held position now.

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a judge may use political contributions to pay for reasonable travel expenses associated with attending a naval ceremony as an invited local dignitary. (AOR-719)

SUMMARY

Under the facts presented, a judge would not convert political contributions to personal use by using political contributions to pay or reasonable travel expenses to attend a naval ceremony as an invited local dignitary.

FACTS

The requestor is a state judge who is also the Regional Presiding Judge for a Judicial Region of Texas. The requestor has been invited to take part in a Federal Celebration of the Navy, specifically about showcasing a Naval Air Station located in one of the counties within her Judicial Region.

The showcase will take place on the USS George H.W. Bush aircraft carrier, which will be near Norfolk, Virginia. The invitation explains that the officials who are invited would need to travel to Norfolk, and the next day, the Navy would fly the invitees out to the USS George H.W. Bush aircraft carrier for the ceremony and celebration.

The requestor asks whether she may use campaign contributions to pay for reasonable travel expenses to Norfolk, Virginia to attend this ceremony.

ANALYSIS

A candidate or officeholder may not convert political contributions to "personal use." *Id.* § 253.035(a), (c). "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d).

Whether it is appropriate for a candidate or officeholder to spend political funds for travel depends on the purpose of the travel. It is appropriate for a candidate to spend political contributions to pay the travel expenses if the expenses are primarily connected to officeholder activities or duties. Conversely, the Election Code does not permit the use of political

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contributions to pay for travel if the primary purpose of the trip is personal. Tex. Ethics Comm'n Op. No. 297 (1996).

Here, the facts indicate that the primary purpose of the travel is connected to requestor's officeholder duties or activities. The requestor was invited to attend the event as a local dignitary. The requestor is the Regional Presiding Judge for the Judicial Region that contains a naval airbase that will be showcased at the naval ceremony and celebration. We believe attending a ceremonial event hosted by a governmental entity under the facts presented is an officeholder activity. We are aware of no facts to suggest the travel would be for a personal or family purpose not connected with attending the governmental function. Therefore, under the facts presented, the requestor may use political contributions to pay for reasonable travel expenses to attend the event.

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether the use of a corporate aircraft may be provided to members of the legislature to attend an event at which the legislators will address an audience and learn about issues facing a West Texas border city. (AOR-720)

SUMMARY

The requestor or the requestor's corporation may grant the use of the aircraft to the legislators as long as it is used to transport the legislators to a conference or similar event where they provide a service, as long as the service is not merely perfunctory. However, the provision of the aircraft appears to be a lobby expenditure that will likely trigger lobby registration and reporting obligations for the person providing the use of the aircraft.

FACTS

The requestor is a West Texas businessman who by virtue of his ownership in one or more corporations (collectively referred to as "the corporation" or "his corporation") has access and the right to use a corporate aircraft that is registered to operate non-commercially.

The requestor has been asked by a local chamber of commerce ("the Chamber"), which is organized as a nonprofit corporation, to provide use of the corporate aircraft to transport a group of committee chairs of the Texas Legislature to attend an event in a West Texas border city. The Chamber's mission includes "setting the conditions for economic prosperity in the city . . . by fostering business."

The requestor states the event the Chamber intends to host will focus on border issues affecting Texas. If permissible, the requestor seeks to provide use of the corporate aircraft to fly 12 to 14 legislative committee chairs to the event and return them to Austin the same day.

Although the request states some details of the event have not been finalized, the Chamber plans on providing a tour of the area to the legislators, including showing the legislators projects that have been funded by the legislature or have a current open funding request. The legislators would also address the audience at the Chamber Event.

The requestor's personal use of the corporate aircraft is governed by a written timeshare agreement under which he is obligated either to recognize the value of the flight as additional income to him from his corporation under applicable IRS rules or to reimburse the corporation

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for any such personal use by him and his guests. The amount the requestor is permitted to reimburse his corporation will be less than the cost of privately chartering a comparable aircraft and may or may not fully reimburse the corporation for the value or cost of the travel.

The requestor states that his only involvement in the event will be providing the use of the corporate aircraft at the request of the Chamber.

ANALYSIS

The requestor or the requestor’s corporation may provide the use of the aircraft the legislators provided it is used to transport the legislators to a conference or similar event where they provide a service, provided the service is not merely perfunctory.

Under the Penal Code a member of the legislature is prohibited from accepting “any benefit from any person,” unless a specific exception applies. Tex. Penal Code §§ 36.08(f); 36.10 (listing exceptions). Similarly, a person may not offer, confer, or agree to confer any benefit to a public servant that the person knows the public servant is prohibited from accepting. *Id.* § 36.09.

Two related exceptions allow for a public servant to accept transportation, lodging, and meals: 1) either as an exception to the general prohibition on honoraria; 2) or as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with the law. Tex. Penal Code § 36.10(a)(8), .10(b). Acceptance as a guest requires the presence of the giftor.

A public servant is generally prohibited from accepting an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. Tex. Penal Code § 36.07. However, a public servant may accept “transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory.” *Id.*, § 36.07(b).

The requestor states the members will provide services by addressing an audience at the event. Addressing an audience, such as giving a speech or participating in a seminar, are express examples of “providing a service” that serves as an exception to the honorarium prohibition. *Id.* .We caution, however, that the service must be more than “merely perfunctory.”

The term “perfunctory” is not defined in the Penal Code and we therefore construe that term according to the rules of grammar and common usage. “Perfunctory” is “characterized by routine or superficiality: mechanical” or “lacking in interest or enthusiasm.” Meriam Webster Online Dictionary.¹ While merely shaking hands or making introductions would be a perfunctory service, we have held that substantively engaging in “panel discussions,” “subcommittee meetings,” board meetings, and delivering speeches, would not. *See* Tex. Ethics Comm’n Op. No. 553 (2020).

¹ <https://www.merriam-webster.com/dictionary/perfunctory>.

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The requestor did not provide specifics regarding the legislators' address to the audience. However, the requestor states the legislators would address an audience during a one-day event at which the legislators will be learning about the border city and related economic development projects. There is no indication that the legislators are being provided a pleasure trip with a perfunctory speech added in an attempt to take advantage of a Penal Code exception. We assume the requestor anticipates that the legislators would engage the audience in a substantive way regarding the topics of the event, which in the context of the request, would not be merely perfunctory.

Travel that is accepted under the exception to the honoraria prohibition is not a political contribution. Tex. Penal Code § 36.07(b-1). Therefore, it would not be subject to the restrictions on corporate political contributions or the moratorium on accepting political contributions during the regular legislative session. However, finding that the transportation is acceptable under Section 36.07(b) and under campaign finance laws does not exempt the requestor from the laws related to lobbying.

The facts suggest the provision of air travel is a lobby expenditure.

The key consideration to determine whether the laws regulating lobbying are implicated is whether the expenditure for travel is made "to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action" or to establish goodwill "for the purpose of later communicating to influence administrative or legislative action." Tex. Gov't Code §§ 305.003(a)(1), (2).

Not all expenditures for transportation will qualify as a lobby expenditure. For instance, a university could provide transportation to a legislator so that he can address students to educate them about legislative issues without implicating the lobby laws. However, the requestor states that the Chamber plans on showing the members projects that have been funded by the legislature or have a current open funding request. It therefore appears that the Chamber intends to speak directly with the legislators to influence legislation, including the funding of economic development projects.

A person is required to register as a lobbyist if the person makes a total expenditure greater than \$970 (a threshold that is adjusted annually for inflation) in a calendar quarter on certain activities to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action, unless an exception applies. This includes expenditures for "establishing goodwill with the member for the purpose of later communicating with the member to influence legislation or administrative action." *Id.* § 305.002(2-a).

A person required to register must do so "not later than the fifth day after the date on which the person or the person's employee makes the first direct communication with a member of the legislative or executive branch that requires the person's registration." *Id.* § 305.005(e).

It is not clear from the request whether the requestor will communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative

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action after providing the use of the aircraft. If the requestor does so, it appears he will be required to register as a lobbyist.

A person required to register as a lobbyist may not provide a member of the legislature transportation or lodging unless “the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips” or the transportation is “provided in connection with a conference, seminar, educational program, or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory.” *Id.* §§ 305.024, 025.

Under the facts presented, the Chamber event would be a fact-finding trip for which a lobbyist could provide transportation. As discussed above, the Chamber event is also an event similar to a conference at which the legislators will be addressing an audience. Therefore, a lobbyist could provide transportation to the event, provided the service provided by the legislators is more than merely perfunctory.

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

At what moment does a particular permitting or enforcement matter come within the "official responsibility" of a TCEQ commissioner for purposes of the Section 572.054(b) revolving door prohibition? Does a TCEQ commissioner "participate" in all matters for which a TCEQ investigation was conducted or an application/registration was received before the commissioner left office or only those matters that were presented to the commissioners for consideration? (AOR-721)

SUMMARY

Since a TCEQ commissioner does not exercise authority in an enforcement or permitting matter before it is presented to the commissioners for a decision with notice to the relevant parties, a TCEQ commissioner does not "participate" in such a matter until it is presented to the commissioners for their consideration.

FACTS

The requestor is a former commissioner of the Texas Commission on Environmental Quality (TCEQ).

TCEQ commissioners have a general duty of agency oversight, including its permitting and enforcement programs. However, the requestor states, commissioners have no duty with respect to a particular matter until it is presented to the commission for its consideration with notice and opportunity for each party to participate. In fact, because of the legal restrictions that prohibit commissioner involvement in enforcement and permitting matters unless all parties have notice and an opportunity to be heard, TCEQ commissioners have a legal duty not to participate in contested matters until that time.

The requestor states that while the agency's executive director likely has official responsibility for an enforcement matter upon staff's initial investigation for an enforcement matter and for a permitting matter when a registration or application is received, the commissioners, mindful of the *ex parte* prohibitions and as a matter of practice, carefully avoid communication about (much less any responsibility for) these matters until they are presented to the commission for a decision with notice and opportunity for each party to participate.

ANALYSIS

A former state officer or employee of a regulatory agency may not represent or receive compensation for work on behalf of any person regarding a particular matter in which the former officer or employee participated during state service “either through personal involvement or because the case or proceeding was a matter within the officer’s or employee’s official responsibility.” Tex. Gov’t Code § 572.054(b).

To comply with laws governing contested administrative cases and ethical standards governing the conduct of lawyers, TCEQ commissioners are restricted from participating in—through action or oversight—particular permitting and enforcement matters until they are presented to the commissioners on notice and opportunity for each party to participate. Tex. Gov’t Code § 2001.061; Texas Disciplinary Rule 3.05; Professional Ethics Committee Opinion No. 587 (May 2009). As such, Section 572.054(b) does not apply to all enforcement or permitting matters for which an investigation was conducted or an application/registration was received before the commissioner left office. Instead, the provision applies only to matters that were submitted to the commissioners for consideration before the commissioner left office.

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a part-time legislative staff member may accept outside employment assisting a registered lobbyist. (AOR-722)

SUMMARY

A legislative staff member may not accept outside employment assisting a registered lobbyist because such a dual role would put the legislative employee in a situation where he may reasonably be required or induced to disclose confidential information or where his official independence and judgement may be reasonably expected to be impaired.

FACTS

The requestor is a part-time staff member for a member of the legislature. The requestor works in the member's district office.

The requestor wishes to accept part-time employment from a registered lobbyist. The requestor's job duties for the lobbyist would include researching legislative issues and drafting letters that the lobbyist would deliver to members of the legislature with the intent to influence legislative action.

The requestor states he would not be in Austin or have direct personal interaction with members of the legislature as part of his work for the registered lobbyist.

ANALYSIS

Several laws prohibits a legislative employee from accepting outside employment with a lobbyist.

The proposed employment implicates Chapter 36 of the Penal Code.

Legislative employees are prohibited from accepting "any benefit from any person" unless a statutory exception exists. Tex. Penal Code §§ 36.08(f) (creating a general prohibition); 36.10 (listing exceptions).

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Compensation received for employment is a benefit. *Id.* § 36.01. (defining a “benefit” as “anything reasonably regarded as pecuniary gain or pecuniary advantage.”).

However, compensation for outside employment is permissible under Chapter 36 of the Penal Code if the compensation is “conferred on account of . . . professional, or business relationship *independent* of the official status of the recipient.” *Id.* § 36.10(b)(2)(emphasis added).

Whether a lobbyist hires a legislative staffer for reasons “independent” from their position as a legislative employee is a fact question. But a lobbyist’s employment of a person who also works for the legislature—at the very least—raises serious questions as to whether such employment is “independent” of the staffer’s official status.

The effect of an advisory opinion is to provide those who reasonably rely on the opinion with a defense in a criminal prosecution or an action to impose a civil penalty. Tex. Ethics Comm’n Op. No. 147 (1993); Tex. Gov’t Code § 571.097. Based on the limited facts presented in this advisory opinion request we cannot say the proposed employment arrangement would be permissible under Sections 36.08 and 36.10 of the Penal Code.

Chapter 36 of the Penal Code also contains Texas’ bribery prohibition. *Id.* § 36.02. A public servant may not intentionally or knowingly accept any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant. *Id.* Whether a public servant actually has the power to deliver the promised act is not a defense to bribery. *Id.* § 36.02(b).

Although the facts presented in this request do not indicate that the requestor would receive compensation for an exercise of official discretion, we note that the proposed employment would cast serious doubt as to the legitimacy of the requestor’s official acts.

The proposed employment implicates Chapter 39 of the Penal Code.

Chapter 39 of the Penal Code broadly prohibits a public servant from misusing information or property that has come into the person’s possession by virtue of the public servant’s office or employment. *See* Tex. Penal Code § 39.02 (abuse of official capacity); 39.06 (misuse of official information). Although the facts presented do not show that the proposed employment relationship would definitively violate provisions of Chapter 39 of the Penal Code, it would create a situation which would be susceptible to abuse.

The proposed employment violates Chapter 572 of the Government Code.

While a legislative staff member accepting employment with a lobbyist creates a situation ripe for violating a Penal Code statute as explained above, Chapter 572 of the Government Code includes standards of conduct for state employees meant to restrict a state employee from even entering into such a compromising situation. The law states that a state employee, “should not,” among other things:

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- “accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;”
- “accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;” or
- “intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.”

Tex. Gov't Code § 572.051(2),(3),(5). As an employee of the Legislature, the requestor is expected to work in the best interest of the member's constituents and the State of Texas. An employee of a lobbyist is expected to work in the best interest of the lobbyist's clients. Accepting such a dual role would put the legislative employee in a situation where he may reasonably be required or induced to disclose confidential information or where his official independence and judgement may be reasonably expected to be impaired. The employment relationship with a lobbyist could also create a situation in which the legislative employee is rewarded by the lobbyist for using his power as a legislative employee—whatever that may be—to further the interests of the lobbyist's clients.

For those reasons a legislative employee accepting employment to assist a lobbyist would violate Section 572.051 of the Government Code. The only express sanction for a violation of Section 572.051 (that is not also a violation of another law) is possible termination of employment. *Id.* § 572.051(b).