

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

Steven D. Wolens, Chair  
Chad M. Craycraft, Vice Chair  
Jim Clancy  
Randall H. Erben

Chris Flood  
Mary K. "Katie" Kennedy  
Tom Ramsay  
Joseph O. Slovacek

## EXECUTIVE SESSION AGENDA

---

Date and Time: 2:00 p.m., Tuesday, March 27, 2018  
Location: Room E1.014, Capitol Extension, Austin, Texas

---

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
3. Discussion of pending litigation to seek legal advice relating to the following:
  - A. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250<sup>th</sup> Judicial District Court in Travis County, Texas; and Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas.
  - B. Cause No. D-1-GN-14-001252: *Empower Texans, Inc. and Michael Quinn Sullivan v. State of Texas Ethics Commission; Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission; Tom Ramsay, individually and in his capacity as Commissioner; et al.*; in the 53<sup>rd</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00770-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Tom Ramsay in his individual capacity, et al.*; in the Third Court of Appeals, Austin, Texas.
  - C. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

---

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

- D. Civil Action No. 5:14-cv-00133-C: *Texas Home School Coalition Association, Inc. v. Matthew D. Powell, in his official capacity as District Attorney of Lubbock County, et al.*, in the United States District Court for the Northern District of Texas, Lubbock Division.
- E. Cause No. D-1-GN-16-000149: *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the 261<sup>st</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00167-CV: *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- F. Cause No. 2017-CR-01930: *State of Texas v. Carlos A. Elizondo*, in the 107th Judicial District Court of Cameron County, Texas.
4. Discussion of personnel matters related to Executive Director, General Counsel and/or Director of Enforcement.
5. Discussion and seeking legal advice regarding referrals and orders under Subchapter F (Enforcement), Chapter 571, Texas Government Code.
6. **Reconvene in open session.**
7. Adjourn.

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

**NOTICE:** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

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

Steven D. Wolens, Chair  
Chad M. Craycraft, Vice Chair  
Jim Clancy  
Randall H. Erben

Chris Flood  
Mary K. "Katie" Kennedy  
Tom Ramsay  
Joseph O. Slovacek

## PUBLIC MEETING AGENDA

---

Date and Time:	9:00 a.m., Wednesday, March 28, 2018
Location:	Room E1.014, Capitol Extension, Austin, Texas

---

1. Call to order; roll call.
2. Approve minutes for the following meetings:
  - Executive Session – January 30, 2018; and
  - Public Meeting – January 31, 2018.
3. Discussion regarding the next Texas Ethics Commission meeting.
4. Discussion and possible appointment of a Nominating Committee of Commissioners for the positions of Chair and Vice Chair of the Texas Ethics Commission.

### ADMINISTRATIVE WAIVERS, REDUCTIONS, APPEALS OF FINES

5. Briefing, discussion, and possible action on appeal of fines increased by the Commission, and on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following individual: Kelley Sullivan (00081216).

### ADVISORY OPINIONS

6. Discussion of Advisory Opinion Request No. AOR-625: Whether a communication relating to a measure election complies with section 255.003 of the Election Code.

This opinion request construes section 255.003 of the Election Code.

---

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

7. Discussion of Advisory Opinion Request No. AOR-626: Whether a candidate may request businesses to offer or confer a deal or discount to a person merely because that person has voted, and whether the candidate may create and distribute fliers advertising such a deal or discount.

This opinion request construes Chapter 36 of the Penal Code.

8. Discussion of Advisory Opinion Request regarding legislative bribery.

## **RULEMAKING**

### **RULES FOR ADOPTION**

9. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 6.1 and new Ethics Commission rules §§ 27.1 and 27.101, regarding when a declaration of intent (JDI) is required to for judicial candidates.
10. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules §§ 12.31 and 12.33, regarding decorum and sanctions in sworn complaint proceedings.
11. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.5, regarding a county elections administrator or tax assessor-collector acting as the filing authority for campaign finance reports.
12. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.33, regarding the authority of the Commission or local filing authority to terminate an inactive filer's campaign treasurer appointment.
13. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules § 12.36 (Assessment of Civil Penalty) and a repeal of Ethics Commission Rules § 18.27 (Sworn Complaints), clarifying the facts that the Commission will consider when assessing a civil penalty in the complaint process.
14. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.87 (Resolution of Preliminary Review Hearing), regarding procedures for preliminary review hearings.

**PROPOSED RULES FOR PUBLICATION**

15. Public discussion and possible action on the proposal and publication in the Texas Register of amendments to Ethics Commission Rules §§ 6.7, 12.53, 12.81, 12.83 and 12.84, and new Ethics Commission Rules § 12.82, regarding communications between commission staff and members.
16. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 26.1, regarding political advertising on the Internet.
17. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.13, regarding non-resident attorneys appearing before the commission.
18. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 18.7, regarding the late filing of a report when the Commission's office is closed.
19. Public discussion and possible action on the proposal and publication in the Texas Register of new Ethics Commission Rules in Chapter 12, regarding new procedural rules for the formal hearing process.
20. Public discussion and possible action on the proposal and publication in the Texas Register of new Ethics Commission Rules Chapter 16 (Facial Compliance Review & Full Audits), including §§ 16.1 – 16.11, regarding procedures for facial compliance reviews and audits.

**OTHER POLICY MATTERS**

21. Discussion of possible recommendations for statutory changes to the 86th Legislature as required by § 571.073 of the Government Code.
22. Adjourn.

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

**NOTICE:** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and

participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

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

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

Email address:

---

DRAFT

---

ETHICS ADVISORY OPINION NO. \_\_\_\_

---

March 28, 2018

*Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-625)*

**SUMMARY**

For purposes of section 255.003 of the Election Code, the attached document is not political advertising and, therefore, that law would not prohibit the spending of public funds to distribute the document unless an officer or employee of the city authorizing such spending of public funds knows that the document contains false information.

**ANALYSIS**

The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with section 255.003 of the Election Code.

The requestor of this opinion states that a city council has called for a special election to put before the city voters a non-binding referendum on a street maintenance fee, which is a utility fee charged to users of the municipal streets. The city states that the purpose of the fee is to raise funds dedicated to the repair and maintenance of the municipal streets. The city desires to produce a pamphlet or brochure ("document"), using public funds, to provide the voters with factual information regarding the referendum. A copy of the proposed document is attached to this opinion as an appendix.

The city voters will vote either for or against the non-binding referendum, which would read on the ballot as follows:

"Do you support the creation of a street maintenance fee for the purpose of repairing and maintaining the City streets?"

The issue is whether distribution of the document by city officers or employees would be permissible under section 255.003 of the Election Code, which provides, in relevant part:

- (a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.



## DRAFT

(b) Subsection (a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

(b-1) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

- (1) the officer or employee knows is false; and
- (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

(c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.

Elec. Code § 255.003. A “measure” is a question or proposal submitted in an election for an expression of the voters’ will. *Id.* § 251.001(19).

The initial question in determining compliance with section 255.003 is whether the document constitutes political advertising, which is defined as follows:

“Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

- (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (B) appears:
  - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
  - (ii) on an Internet website.

*Id.* § 251.001(16).

The critical question in determining whether a communication constitutes “political advertising” is whether the communication supports or opposes a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether it provides information and discussion of the measure without promoting the outcome of the measure. Ethics Advisory Opinion No. 476 (2007).

## **DRAFT**

The document at issue is titled as a “citizen’s guide” to the non-binding referendum on the creation of a street maintenance fee. It includes a statement of the purpose of the measure, the date of the election and the time the voting polls are open, the dates of early voting, and information about how to obtain a list of polling locations. In a question-and-answer format, the document includes information about the amount of the utility fee that would be charged on the municipal services bills, the availability of fee reductions for those eligible, the relationship of the proposed street maintenance fee to previously approved street bonds, the administrative body that would advise the city on the use and duration of the street maintenance fee, and the authority of the city council to create the fee. The document also compares property, gasoline, and sales taxes to the street maintenance fee, and describes the effect of budget reduction and use of existing resources from other taxes the voters are already paying. The document advises voters on where to get more information on the street maintenance fee program on the city’s website.

The document includes information beyond a factual description of the measure. However, in our opinion, the document provides information and discussion of a measure without promoting the outcome of the measure and is not political advertising. Therefore, the use of public funds for the document would not violate section 255.003(a) of the Election Code.

The remaining question in determining compliance under section 255.003 is whether using public funds to produce the document is permissible under section 255.003(b-1). In our opinion, the information in the document is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Therefore, an officer or employee of the city may not spend or authorize the spending of public funds to distribute the document knowing that the document contains information that is false. Whether or not an officer or employee provides such authorization is a fact question that cannot be resolved in an advisory opinion.

Citizen's Guide to the

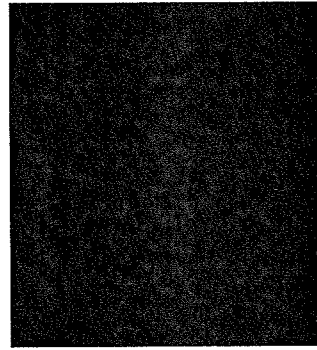
## **Saturday, May 5, 2018**

### **Non-Binding Referendum on the Creation of a Street Maintenance Fee**

#### **Voter Information**

The City Council has called a non-binding referendum on the question of whether or not the City of [redacted] should create a street maintenance fee for the purpose of repairing and maintaining City streets.

The election will be held on Saturday, May 5, 2018. Voting polls open at 7 a.m. and close at 7 p.m. Early voting will be April 23 to May 1, 2018. For a complete list of polling locations, please visit [redacted] or call the City Secretary's Office at [redacted].



#### **Q: What is a Street Maintenance Fee?**

A street maintenance fee is a charge on your municipal services bill (city utility bill) and is a dedicated revenue stream to be used exclusively to maintain and repair city streets.

#### **Q: What would I be charged if the City Council creates a street maintenance fee?**

For residential customers who do not qualify for a fee reduction, the charge is \$6.75 per month.

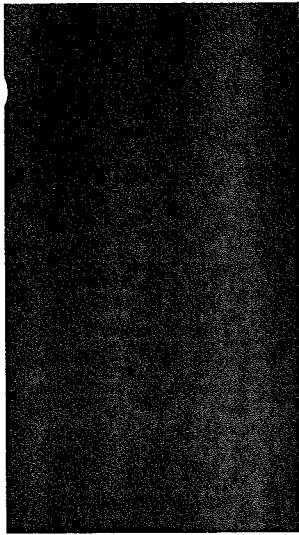
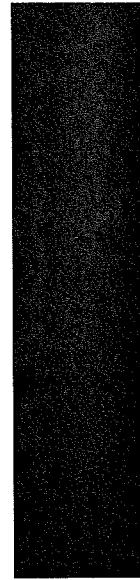
Fee reductions are available for those Over 65 with an Over 65 exemption on their homestead property. If they apply for the reduction, their charge is reduced to \$1.75 per month.

Fee reductions are also available for those least able to pay. Customers meeting income guidelines used by the Office of Neighborhood Services to determine eligibility for utility assistance are eligible for a fee reduction to \$1.75 per month.

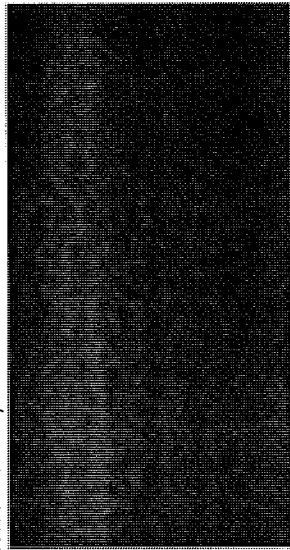
Commercial customers will be charged \$25, \$35, \$45, \$55, \$65 or \$75 based on the traffic volume they attract and generate.

#### **Q: We just approved \$45.9 million in street bonds, where did the money go?**

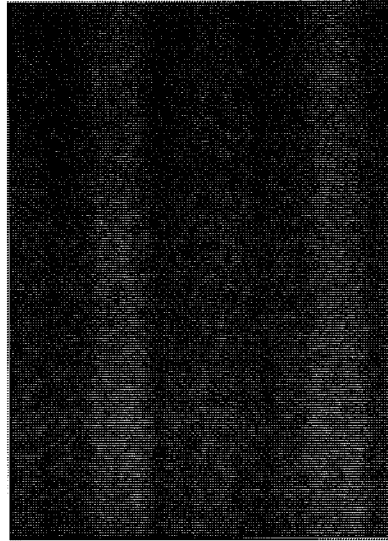
The voters approved \$45.9 million in street bonds in 2015. The City is currently completing the bond program authorized in 2015. To date we have completed the following streets:



The following streets are being repaired in the current fiscal year 2018:



These streets will be repaired in fiscal year 2019 and fiscal year 2020:



#### **Q: If we are still spending bond money, why is Council considering a Street Maintenance Fee?**

The 2015 Bond dollars are repairing streets that need more than minor maintenance or regular maintenance activities. The Street Maintenance Fee

will be used to fund the maintenance activities needed to keep these streets and other streets in good condition. The Street Maintenance Fee would also be used to repair and maintain residential streets.

**Q: Will we still need to issue street bonds if Council creates a Street Maintenance Fee?**

Yes, the Street Maintenance Fee will not replace the need for street bond elections in the future. The Street Maintenance Fee is for general maintenance (potholes, crack seal, seal coats, minor pavement rehab, etc.) Street bonds are for major rehab, reconstruction activities, and new streets.

**Q: I own a business, how do I know how much I might pay if Council creates a Street Maintenance Fee?**

As mentioned above, commercial customers would pay based on a traffic generation scale. The lowest trip generators would pay \$25 per month. The highest trip generators would pay \$75 per month.

If a commercial customer feels like they have been misclassified, they can seek reclassification through the Street Advisory and Appeal Board.

**Q: What is the Street Advisory Board?**

The Street Advisory Board is a Mayor appointed, Council confirmed advisory board that will set goals, determine projects and hear appeals on the Street Maintenance Fee.

**Q: If created, will the fee ever go away?**

The Street Advisory Board will make a recommendation to the City Council on

whether or not the Street Maintenance Fee should continue on a 3 to 5 year cycle.

**Q: If a majority of voters do not support the Street Maintenance Fee, can the City Council still create the fee?**

Yes, the City Council still has the authority to create the fee even if the voters say they don't want it.

**Q: What about people that live outside the city limits. Are they required to pay the fee?**

The City of [REDACTED] cannot charge the fee to customers or properties located outside the city limits.

**Q: Why not just raise the property tax?**

A property tax increase large enough to raise the dollars associated with the Street Maintenance Fee would likely be around ten cents per \$100 valuation. The average home value in [REDACTED] is around \$104,000. This equates to an \$8.66 cent monthly charge on your property tax bill. The Street Fee is \$6.75 per month. This is possible because the Street Maintenance Fee is applied to Colleges, Churches, and those over 65 who might not otherwise pay a property tax increase.

**Q: Why don't we charge a gasoline tax, or charge more for vehicle registrations?**

The City of [REDACTED] isn't allowed to charge a motor fuels tax. That is reserved to the State of Texas and the United States Government alone. The vehicle registration fees collected by the County are reserved for County and State use.

**Q: Can we increase the total sales tax rate to fund street maintenance?**

No. The City of [REDACTED] currently levies 2.0% of the 8.25% sales and use tax we all pay. 1.0% is levied for general uses, 0.5% is levied for property tax reduction, and 0.5% is levied for Type A Economic Development activities (DCOA). The State of Texas levies the remaining 6.25%. The City of [REDACTED] is not allowed by law to levy more than 2.0%.

**Q: Why don't you just reduce your budget to live within your means like everyone else does?**

The proposed street maintenance fee program plan does use existing resources to pay for streets. By Fiscal Year 2023, \$11,220,660 will be spent on street maintenance from taxes you are already paying. If you include the DCOA contributions (sales taxes you currently pay) for the first five years of the program, that number increases to \$19,720,660.

**Q: Where can I get more information on the street maintenance fee program?**

You can read the proposed ordinance, see a presentation on the street fee program and review other information on the street maintenance fee by going to the City's Website at [REDACTED]. Click on "Learn more about the Street Maintenance Fee," towards the bottom of the page.

**EXHIBIT A**

**Text of Proposed Rules**

The proposed new language is indicated by underlined text.

**Chapter 6. ORGANIZATION AND ADMINISTRATION**

**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.

[...]

(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 subsection (20) of this section.

**Chapter 27. Judicial Campaign Fairness Act**

**Subchapter A. GENERAL RULES**

**§27.1. Applicability.**

This chapter applies only to a candidate, officeholder, political committee, political contribution, or political expenditure to which the Judicial Campaign Fairness Act, Subchapter F, Chapter 253, Election Code, applies.

## Subchapter C. GENERAL REPORTING RULES

### §27.101. When a Declaration of Compliance or Declaration of Intent Is Required.

(a) “Declaration” means a declaration of compliance or declaration of intent required to be filed under §253.164, Election Code.

(b) A person is required to file a declaration only when:

(1) the person becomes a candidate for a judicial office at a time when the person is not already a candidate for another judicial office, or

(2) the person changes their intent to comply or not comply with the voluntary expenditure limits as stated in their most recently filed declaration.

(c) A candidate for a judicial office who decides to seek a different judicial office that requires the candidate to transfer their campaign treasurer appointment to another filing authority under §20.206 of this title shall also file with the other authority:

(1) a copy of the candidate’s declaration certified by the authority with whom it was originally filed, or

(2) a new declaration, if the candidate changes their intent to comply or not comply with the voluntary expenditure limits as stated in their most recently filed declaration.

(d) A declaration remains in effect for the judicial office sought by a candidate at the time it is filed. If a candidate for a judicial office decides to seek a different judicial office, the declaration that is in effect remains in effect for the subsequent judicial office.

EXHIBIT A

Text of Proposed Rules

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§12.31. 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 the commission enters and leaves the hearing room;

(2) when addressing the commission; and

(3) 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.

**§12.33. Sanctioning Authority.**

(a) The presiding officer 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 presiding officer 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 §12.31 of this chapter.

(b) The presiding officer 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.

**EXHIBIT A**

**Text of Proposed Rule Amendment**

The proposed new language is indicated by underlined text.

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

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

**§ 20.5. Reports Filed with a County Filing Authority.**

~~[(a)]~~ The county clerk (or the county elections administrator or tax assessor-collector who is required to perform the functions of the county clerk as provided by §31.043 or §31.071 of the Election Code)[~~, as applicable in a particular county~~] is the appropriate filing authority for reports filed by:

- (1) a candidate for:
  - (A) a county office;
  - (B) a precinct office;
  - (C) a district office (except for an office in a multi-county district); or
  - (D) an office of a political subdivision other than a county if the political subdivision is within the boundaries of a single county and if the governing body of the political subdivision has not been formed;
- (2) a person holding an office listed in paragraph (1) of this section;
- (3) a specific-purpose committee supporting or opposing a candidate listed in paragraph (1) of this section or an office holder listed in paragraph (2) of this section;
- (4) a specific-purpose committee supporting or opposing:
  - (A) a measure to be submitted to the voters of a single county; or
  - (B) a measure concerning a political subdivision other than a county when the governing body for the political subdivision has not been formed and no boundary of the political subdivision crosses a boundary of a county.

~~[(b) A report must be filed with both the county filing authority and the commission if the report is required to be filed by a candidate for or holder of a judicial district office filled by voters of only one county, or by a specific-purpose committee supporting, opposing, or~~

~~assisting such a candidate or officeholder. However, the campaign treasurer appointment must be filed only with the commission.]~~

**EXHIBIT A**

**Text of Proposed Rule Amendment**

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

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

**Subchapter A. GENERAL RULES**

**§ 20.33. Termination of Campaign Treasurer Appointment by Commission.**

(a) The commission may terminate the campaign treasurer appointment of an inactive candidate or an inactive political committee.

(b) For purposes of subsection (a) of this section and Section 252.0131, Election Code, a candidate becomes “inactive” if the candidate files a campaign treasurer appointment with the commission and more than one year has lapsed since the candidate has filed any required campaign finance reports with the commission.

(c) For purposes of subsection (a) of this section and Section 252.0131, Election Code, a political committee becomes “inactive” if the political committee files a campaign treasurer appointment with the commission and more than one year has lapsed since the campaign treasurer of the political committee has filed any required campaign finance reports with the commission.

(d) This section does not apply to a candidate who holds ~~[has been elected to]~~ an office specified by Section 252.005(1) or (5), Election Code.

## Civil Penalties

**Text of Proposed Rule and Repeal**

The proposed new language is indicated by underlined text.

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

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

**§ 12.36. Assessment of Civil Penalty.**

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

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

(c) The commission may consider a late or corrected report or corrective action to be a mitigating factor in determining the amount of a fine, if any.

**Chapter 18. GENERAL RULES CONCERNING REPORTS**

**[§ 18.27. Sworn Complaints:**

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

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

**EXHIBIT A**

**Text of Proposed Rule**

**§ 12.87. Resolution of Preliminary Review Hearing.  
Text of Proposed Rule**

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

**Chapter 12. SWORN COMPLAINTS  
Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW.**

§ 12.87. Resolution of Preliminary Review Hearing.

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

(1) commission staff shall send to the respondent a proposed resolution within 14 [~~10~~] days; and

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

(A) the proposed resolution signed by the respondent;

(B) a written counter offer; or

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

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

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

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

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

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

(e) The executive director shall dismiss a complaint if the commission does not order a formal hearing within 180 days after the conclusion of a preliminary review hearing.

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

**EXHIBIT A**

- 1. Executive Director Resolves All Complaints in Preliminary Review**
- 2. Expressly Permitting Ex Parte Communications Regarding Initiation**

**Text of Proposed Rule Amendments**

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

**Chapter 6. ORGANIZATION AND ADMINISTRATION**

**Subchapter A. GENERAL 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) a final decision after a formal hearing that a violation has not occurred, which requires only five votes, or

(B) a decision to resolve a complaint during a preliminary review, which is made by the executive director;

(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.

## **Chapter 12. SWORN COMPLAINTS**

### **Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

#### **§ 12.53. Commission Initiated Complaint.**

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate outside the presence of the respondent 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 outside the presence of the respondent, in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) [~~a~~] 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) [~~b~~] 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) [~~e~~] 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 PRELIMINARY REVIEW**

#### **§ 12.81. Technical, Clerical, or De Minimis Violations.**

(a) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government Code may include a first-time allegation against a respondent for:

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

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

(5) Using a representation of the state seal by a person who is not an officeholder in political advertising that is not otherwise misleading;

(6) Filing a late campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report, and the alleged violations do not substantially affect disclosure;

(7) Filing an incomplete or corrected campaign finance report that is not a report due 30 or 8 days before an election or a special pre-election report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 10% of the total amount of political contributions on the corrected report, or \$5,000;

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 10% of the total amount of political expenditures on the corrected report, or \$5,000; or

(C) the total amount of incomplete or incorrectly reported political contributions or political expenditures does not exceed the amount of the filing fee for a place on the ballot for the office sought or held by the respondent during the period covered by the report at issue, or, if there is not a set filing fee, \$500;

(8) Filing an incomplete or corrected campaign finance report if the incomplete or corrected information is not misleading and does not substantially affect disclosure, including:

(A) the filer's full name, address, office sought, or office held;

(B) the identity and date of the election for which the report is filed;

(C) the campaign treasurer's full name, address, or telephone number;

(D) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by a political committee;

(E) the full name of each identified officeholder or classification by party of officeholders assisted by a political committee;

(F) the amount of total political contributions maintained as of the last day of the reporting period, if the error is a de minimis error as defined by §20.50 of this title;

(G) the purpose of a political expenditure; or

(H) the period covered by the report;

(9) Failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500;

(10) Failure to disclose information related to an out-of-state political committee required by §20.29 or §22.7 of this title if the total amount of political contributions accepted from the committee does not exceed \$10,000 and the contributions are otherwise properly disclosed;

(11) Failure to disclose the principal occupation, job title, or employer of a contributor if the total amount of political contributions accepted from the contributor does not exceed \$15,000 and the contributions are otherwise properly disclosed;

(12) As a general-purpose committee, making a political contribution to another general-purpose committee without including in its campaign treasurer appointment the name of the recipient committee before making the contribution, if the contributing committee properly disclosed the contribution;

(13) Failure to file a termination report required by §20.317 or §20.417 of this title if the period covered by the termination report is included in a subsequently filed report;

(14) Filing a campaign finance report without using the form prescribed by the commission if the report:

(A) discloses all the information required by chapter 254 of the Election Code and this title;

(B) is substantially similar in size and format to the form prescribed by the commission; and

(C) is not misleading and does not substantially affect disclosure;

(15) Making a political contribution prohibited by §253.1611, Election Code, if the contribution does not exceed the limits by more than \$1,000 and the amount in excess is returned to the contributor; or

(16) Failure to timely respond to a sworn complaint if the response is no more than 30 days late and the respondent shows good cause for the late response.

(b) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government Code may include allegations against a respondent for:

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

(2) Filing an incomplete or corrected campaign finance report if:

(A) the total amount of incomplete or incorrectly reported political contributions does not exceed the lesser of 5% of the total amount of political contributions on the corrected report, or \$2,500; or

(B) the total amount of incomplete or incorrectly reported political expenditures does not exceed the lesser of 5% of the total amount of political expenditures on the corrected report, or \$2,500; or

(3) Filing an incomplete or inaccurate campaign finance report by a general-purpose committee if, during the period covered by the report and during each of the two reporting periods preceding the period covered by the report, the committee did not:

(A) accept political contributions totaling \$3,000 or more;

(B) accept political contributions from a single person totaling \$1,000 or more; or

(C) make political expenditures totaling \$3,000 or more.

~~[(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or de minimis under subsection (a) of this section, 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.]~~

~~[(d) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all the alleged violations are technical, clerical, or de minimis under subsection (b) of this section, the executive director may enter into an agreed resolution with the respondent. Before entering into an agreed resolution, the executive director may require a respondent to correct the violations.]~~

~~[(e) An assurance of voluntary compliance or an agreed resolution entered into under this section is confidential under section 571.140 of the Government Code.]~~

~~[(f) An assurance of voluntary compliance or an agreed resolution entered into under this section may include a penalty not to exceed \$500.]~~

**§ 12.82. Resolution During Preliminary Review.**

(a) During a preliminary review, the executive director may resolve a sworn complaint by entering into an assurance of voluntary compliance, agreed resolution, or other agreed order with a respondent and may require a respondent to correct any violations or noncompliance that is the subject of the complaint. The executive director may require a respondent to pay a civil penalty in an amount not to exceed the maximum amount allowable under §571.173, Government Code, or other applicable law.

(b) An assurance of voluntary compliance entered into under this section is confidential under §571.140 of the Government Code.

(c) During a preliminary review, the executive director may dismiss a complaint after determining that there is credible evidence of no violation of any law administered and enforced by the commission.

(d) Except as provided by subsection (e) of this section, if during a preliminary review the executive director receives a written request for a preliminary review hearing from a respondent, the executive director shall set the complaint for a preliminary review hearing.

(e) If the executive director determines that good cause exists to postpone a preliminary review hearing, the executive director may postpone such hearing until the following commission meeting. The executive director may postpone such hearing not more than twice.

**§ 12.83 Preliminary Review.**

(a) A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent pursuant to section 571.1243 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period beginning on the date the commission sends the written questions and ending on the date the commission receives the respondent's written response.

(c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period beginning on the date the staff applies to the commission for the subpoena and ending on either:

- (1) the date the commission rejects the staff's application for a subpoena;
- (2) the date the person to whom the subpoena is directed complies with the subpoena; or
- (3) the date the commission reports to a district court pursuant to section 571.137(c) of the Government Code.

(d) Commission staff may not communicate with a commissioner outside the presence of the respondent for the purpose of influencing a decision on a pending sworn complaint. [~~The executive director may report to the commission any findings and conclusions from a preliminary review of a complaint.~~]

**EXHIBIT B**

- 1. Expressly Permitting Ex Parte Communications Regarding Initiation**
- 2. Expressly Permitting Ex Parte Communications Regarding Preliminary Review**

**Text of Proposed Rule Amendments**

The proposed new language is indicated by underlined text.

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

**Chapter 12. SWORN COMPLAINTS**

**Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

**§ 12.53. Commission Initiated Complaint.**

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate outside the presence of the respondent 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 outside the presence of the respondent, in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) [~~(a)~~] 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) [~~(b)~~] 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) [~~(e)~~] 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 PRELIMINARY REVIEW**

**§ 12.83. Preliminary Review.**

(a) A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives

the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent pursuant to section 571.1243 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period beginning on the date the commission sends the written questions and ending on the date the commission receives the respondent's written response.

(c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period beginning on the date the staff applies to the commission for the subpoena and ending on either:

- (1) the date the commission rejects the staff's application for a subpoena;
- (2) the date the person to whom the subpoena is directed complies with the subpoena; or
- (3) the date the commission reports to a district court pursuant to section 571.137(c) of the Government Code.

(d) During a preliminary review, commission staff may present documents or evidence, make recommendations, or otherwise communicate with commissioners outside the presence of the respondent for the purpose of investigating and resolving a sworn complaint. [The executive director may report to the commission any findings and conclusions from a preliminary review of a complaint.]

(e) Commission staff may not communicate with a commissioner outside the presence of the respondent for the purpose of influencing a decision on a pending sworn complaint after the complaint has been scheduled for a preliminary review hearing and notice of the hearing has been sent to the respondent.



**EXHIBIT C**

- 1. Requiring Prior Agreement on Non-Technical/De Minimis Complaints**
- 2. Expressly Permitting Ex Parte Communications Regarding Initiation**

**Text of Proposed Rule Amendments**

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

**Chapter 12. SWORN COMPLAINTS**

**Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

**§ 12.53. Commission Initiated Complaint.**

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate outside the presence of the respondent 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 outside the presence of the respondent, in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) [~~(a)~~] 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) [~~(b)~~] 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) [~~(c)~~] 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 PRELIMINARY REVIEW**

**§ 12.83. Preliminary Review.**

(a) A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. The executive director may grant an extension of the time period for good cause shown.

(b) If the commission staff submits written questions to a respondent pursuant to section 571.1243 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number of business days during the period beginning on the date the commission sends the written questions and ending on the date the commission receives the respondent's written response.

(c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is increased by the number of business days during the period beginning on the date the staff applies to the commission for the subpoena and ending on either:

- (1) the date the commission rejects the staff's application for a subpoena;
- (2) the date the person to whom the subpoena is directed complies with the subpoena; or
- (3) the date the commission reports to a district court pursuant to section 571.137(c) of the Government Code.

(d) During a preliminary review, commission staff shall determine whether there is credible evidence of a violation of law within the jurisdiction of the commission. If staff determines there is credible evidence of a violation, staff shall attempt to reach an agreement with the respondent to resolve and settle the complaint, including the payment of any civil penalty. If staff determines there is no credible evidence of a violation, staff shall recommend to the commissioners that the complaint be dismissed. If staff determines there is insufficient evidence of a violation, staff shall recommend to the commissioners that the complaint be dismissed or request a preliminary review hearing.

~~[(d) The executive director may report to the commission any findings and conclusions from a preliminary review of a complaint.]~~

(e) Staff shall present any agreement or recommendation under subsection (d) of this section to the commissioners. If there are insufficient votes by the commissioners to accept the agreement or recommendation, the commissioners may direct staff to propose an agreement to the respondent. If no agreement between the commissioners and the respondent can be reached, or if the executive director receives a written request for a preliminary review hearing from a respondent, the executive director shall set the complaint for a preliminary review hearing.

(f) Commission staff may not communicate with a commissioner outside the presence of the respondent for the purpose of influencing a decision on a pending sworn complaint.

(g) If the executive director determines that good cause exists to postpone a preliminary review hearing, the executive director may postpone such hearing until the following commission meeting. The executive director may postpone such hearing not more than twice.

EXHIBIT A

Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

CHAPTER 26. POLITICAL AND LEGISLATIVE 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 campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

(d) A disclosure statement is not required on political advertising appearing on an Internet website if:

- (1) no payment was made to create, publish, or broadcast the political advertising, and
- (2) the political advertising was not authorized by a candidate or political committee.

(d-1) For purposes of subsection (d) of this section, "payment" does not include the use of goods or equipment acquired for purposes other than political advertising or the consumption of electricity.

**EXHIBIT A**

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 12. SWORN COMPLAINTS**

**Subchapter A. GENERAL PROVISIONS AND PROCEDURES**

**§ 12.13. 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, and telephone and fax numbers. 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 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.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

**Chapter 18. GENERAL RULES CONCERNING REPORTS**

**§18.7. Timely Reports and Complete Reports.**

(a) A report is timely if it is complete and is filed by the applicable deadline using the reporting method required by law.

(b) The deadline for any report filed electronically with the commission is midnight Central Time Zone on the last day for filing the report under the law requiring the filing of the report.

(c) A report is late if it is:

(1) incomplete;

(2) not filed by the applicable deadline; or

(3) not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods.

(d) A report is not late if the commission's office is closed on the deadline for the report due to weather or other emergency and the report is filed by midnight, Central Time Zone, on the next regular business day, excluding a legal holiday, during which the commission's office is open.

**EXHIBIT A**

**Text of Proposed Rules**

The proposed new language is indicated by underlined text.

**Chapter 16. FACIAL COMPLIANCE REVIEWS AND AUDITS**

**§ 16.1. Definitions.**

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

(1) Deficiency—An error, omission, inaccuracy, or violation of a law or rule administered and enforced by the commission that is apparent on the face of a statement or report filed with the commission.

(2) Compliance review report—A report sent to a filer detailing deficiencies in a statement or report that is the subject of a facial compliance review.

(3) Facial compliance review—A review conducted under section 571.069 of the Government Code of the information disclosed on a statement or report, randomly selected in accordance with §16.15, filed with the commission for facial completeness, accuracy, reliability, and compliance with the law.

**§ 16.15. Random Selection.**

Prior to conducting a facial compliance review of a statement or report under this chapter, the statement or report must be randomly selected by commission staff from a list of all statements or reports filed by a particular filer type for a specific filing deadline.

**§ 16.2. Corrected or Amended Report Filed During a Facial Compliance Review; Late Fines.**

(a) A statement or report that corrects or amends a statement or report that is subject to a facial compliance review shall be filed not later than the seventh business day after the date the person filing the statement or report receives a compliance review report. A statement or report that is timely corrected or amended is considered filed as of the date the statement or report was originally filed.

(b) A statement or report that corrects or amends a statement or report that is the subject of a facial compliance review is not subject to a late fine if:

(1) The report is filed not later than 14 business days after the date the filer receives the compliance review report; and

(2) The report complies with the law.

(c) A report that corrects the total amount of political contributions maintained disclosed in the report that was filed immediately prior to the report that is subject to the facial compliance review is not subject to a late fine if:

(1) The report is filed not later than 14 business days after the date the filer receives the compliance review report; and

(2) The report complies with the law.

(d) A statement or report filed to correct or amend a statement or report in accordance with this section will not be considered a prior late offense for purposes of determining the waiver or reduction of a fine under chapter 18 of this title.

**§ 16.3. Additional Documents and Information Submitted in Response to a Facial Compliance Review; Timeliness.**

(a) The commission may request from a filer documentation and other information used by the filer to compile a report or statement that is subject to a facial compliance review.

(b) Documentation and other information requested by the commission is timely submitted if received by the commission not later than the seventh business day after the date the filer receives the request for additional documentation.

(c) Documentation or other information submitted by a filer to refute a deficiency cited in a compliance review report is timely submitted if received by the commission not later than the later of:

(1) the 14th day after the date the filer receives the compliance review report; or

(2) the 31st day after the date the statement or report subject to a facial compliance review was originally due.

**§ 16.4. Commission Initiated Preliminary Review or Audit Resulting from a Facial Compliance Review.**

(a) By a vote of at least six commission members, the commission may initiate a preliminary review as authorized by section 571.124 of the Government Code or perform

a complete audit of a statement or report that is subject to a facial compliance review under section 571.069 of the Government Code if:

(1) a corrected or amended report or statement is not resubmitted to the commission in accordance with section 16.2;

(2) documentation or other information requested by the commission during a facial compliance review is not submitted to the commission in accordance with section 16.3; or

(3) the commission has determined by a vote of at least six commission members that the corrected statement or report filed in response to a compliance review report, when considered with any additional documentation or information, does not comply with the law.

**§ 16.5. Notice of Audit of Report or Statement.**

The commission shall notify a filer that the commission will perform a complete audit of a report or statement that is the subject of a facial compliance review not later than the fifth business day after the date the commission votes to initiate the audit.

**§16.6. Supporting Documentation in Response to Audit; Timeliness.**

(a) A filer must submit to the commission supporting documentation containing information necessary for filing the statement or report that is subject to the audit, such as:

(1) Bank statements;

(2) Cancelled checks;

(3) Receipts;

(4) Credit card statements;

(5) Invoices;

(6) Loan documents;

(7) Books or ledgers;

(8) Employee timesheets and payroll records;

(9) Certificates of formation or other business documents; and



(10) Real property records.

(b) A filer must submit to the commission the supporting documentation in response to an audit not later than the 25th business day from the date the filer receives notice of the audit.

**§ 16.7. Complete Audit Report.**

(a) Upon completion of an audit, the commission shall send to the filer a complete audit report that includes:

(1) a notification that the commission has determined the report or statement that was subject to the audit complies with the law; or

(2) required corrective actions that the filer must take to cure any deficiency found in the report or statement that is subject to the audit.

(b) A filer must correct or amend a report or statement to correct all deficiencies identified in a complete audit report not later than the 30th business day from the date the filer receives the complete audit report.

(c) A filer may submit to the commission exceptions to any deficiency not corrected under subsection (b) or other information contained in the complete audit report not later than the 30th business day from the date the filer received the complete audit report.

**§ 16.8. Representation by Attorney.**

(a) A filer has the right to be represented by an attorney retained by the filer during a facial compliance review or an audit initiated by the commission as a result of a facial compliance review.

(b) A letter of representation must be submitted to the commission if the filer is represented by an attorney.

**§ 16.9. Authority of the Commission.**

This chapter may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

**§ 16.10. Extension of Deadlines.**

The executive director may extend all deadlines related to this chapter except as provided by section 571.069(a) of the Government Code (relating to when a corrected or amended report is considered filed as of the date the report or statement was originally filed).

**§ 16.11. Waiver of Delivery by Certified Mail.**

A filer may waive the right under section 571.032 of the Government Code to receive written notices related to a facial compliance review or audit by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices by first class mail, electronic mail, or other means.