

TEXAS ETHICS COMMISSION

IN THE MATTER OF

WENDY R. DAVIS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31210297

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 12, 2015, to consider sworn complaint SC-31210297. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 572.023(b)(12) and 572.024 of the Government Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent did not disclose on her 2011 and 2012 Personal Financial Statements (PFS) information regarding: 1) entities in which both she and a registered lobbyist had an interest; and 2) entities from which she received fees for services rendered and which she actually knew directly compensated a registered lobbyist.

III. Facts Supported by Credible Evidence

Credible evidence available to the Commission supports the following findings of fact:

1. The complaint alleged that the respondent did not disclose required information concerning two business entities on her 2011 PFS and her 2012 PFS. The entities at issue are Newby Davis, PLLC (Newby Davis), and Cantey Hanger, LLP (Cantey Hanger). Cantey Hanger and Newby Davis share office space in Fort Worth, Texas.
2. Newby Davis is a law firm that the respondent co-founded in 2009 with her business partner, Brian Newby. The respondent has a 49% interest and Mr. Newby has a 51% interest in the firm. Marcy Weldin Foster has served in an unpaid position as Newby Davis's executive director since November 2010.

3. Cantey Hanger is a law and lobbying firm to which the respondent was an attorney “of counsel” beginning February of 2010. Cantey Hanger has employed Mr. Newby continuously since 2009. Cantey Hanger has also employed Ms. Foster since November 2010.
4. Mr. Newby was a registered lobbyist in 2010 and 2011. In his 2010 lobby registration, Mr. Newby disclosed Cantey Hanger as an entity that retained him for lobbying services. In his 2011 lobby registration, Mr. Newby disclosed both Newby Davis and Cantey Hanger as entities that retained him for lobbying services. Ms. Foster was a registered lobbyist in 2011. In her 2011 lobby registration, Ms. Foster disclosed both Newby Davis and Cantey Hanger as entities that retained her for lobbying services.

Interest in Businesses in Common with Lobbyists

5. The complaint alleged that the respondent did not disclose Newby Davis and Cantey Hanger as entities in which both the respondent and a lobbyist had an interest on the respondent’s 2011 PFS and 2012 PFS.
6. The respondent did not originally disclose Newby Davis as an entity in which both she and a lobbyist had an interest on her PFS filed in 2011. However, the respondent filed a correction to the 2011 PFS that disclosed Newby Davis as such an entity. This correction was made before the sworn complaint was filed, but nearly a year after the original filing deadline. The respondent disclosed Newby Davis as an entity in which both she and a lobbyist had an interest on her original 2012 PFS. On both the corrected 2011 PFS and the 2012 PFS, the respondent included a notation that stated, “Brian Newby lobbies through association with another entity.” The complaint alleged that this statement was misleading. In response to the complaint, the respondent stated that she was not aware that Mr. Newby was a registered lobbyist until after she had filed her 2011 PFS, and that she filed the correction within 14 days of learning that Mr. Newby was registered as a lobbyist.
7. The respondent did not disclose Cantey Hanger as an entity in which both she and a lobbyist had an interest on her 2011 PFS or on her 2012 PFS. In response to the complaint, the respondent stated that she had no ownership interest in Cantey Hanger, and therefore was not required to disclose the firm on her 2011 PFS and her 2012 PFS.

Fees Received for Services Rendered to Lobbyist Employers

8. The complaint alleged that the respondent did not disclose Newby Davis and Cantey Hanger as firms from which she had received fees for services rendered and which she actually knew directly compensated lobbyists on her 2011 PFS and 2012 PFS.

9. The respondent did not disclose Newby Davis or Cantey Hanger as entities from which she received fees for services rendered and which she actually knew directly compensated a lobbyist on her 2011 PFS and her 2012 PFS. In response to the complaint, the respondent stated that she had not received fees for performing lobbying services during 2010 or 2011 from either Newby Davis or Cantey Hanger. She also stated that Newby Davis had never performed or compensated an individual for performing lobbying services. However, both Mr. Newby and Ms. Foster have performed lobbying services for Cantey Hanger. The respondent also stated that she did not know that Mr. Newby was a lobbyist at the time she filed her 2011 PFS.
10. Both Newby Davis and Cantey Hanger were disclosed on both the 2011 PFS and 2012 PFS as sources of occupational income.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Interest in Businesses in Common with Lobbyists

1. A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. GOV'T CODE § 572.023(a). The account of financial activity includes any corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association, excluding a publicly held corporation, in which both the individual and a person registered under Chapter 305 have an interest. *Id.* § 572.023(b)(12).
2. Although "interest" is not defined, Chapter 572 of the Government Code does define "substantial interest" for purposes of other required PFS disclosures. An individual has a substantial interest in a business entity if the individual: (1) has a controlling interest in the business entity; (2) owns more than 10 percent of the voting interest in the business entity; (3) owns more than \$25,000 of the fair market value of the business entity; (4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the business entity; (5) is a member of the board of directors or other governing board of the business entity; (6) serves as an elected officer of the business entity; or (7) is an employee of the business entity. *Id.* § 572.005.

3. Regarding Newby Davis, the respondent has an interest in the firm because she is a partner and 49% owner of the firm. Mr. Newby has an interest in Newby Davis because he is a partner and a 51% owner of the firm. In addition, Mr. Newby was registered as a lobbyist in 2010 and 2011, the calendar years covered by the two PFS reports at issue.
4. The respondent did not disclose Newby Davis as an entity in which both she and a lobbyist had an interest on her original 2011 PFS, which disclosed financial activity occurring in calendar year 2010. Therefore, there is credible evidence of a violation of section 572.023(b)(12) of the Government Code with regard to Newby Davis on the 2011 PFS.
5. The respondent did disclose Newby Davis as an entity in which both she and a lobbyist had an interest on her 2012 PFS. The additional statement indicating that Mr. Newby's lobbying services were performed for another entity does not negate the disclosure. Therefore, there is credible evidence of no violation of section 572.023(b)(12) of the Government Code with regard to Newby Davis on the 2012 PFS.
6. Regarding Cantey Hanger, the respondent had an interest in the firm because she served in an "of counsel" position. The statute does not require an ownership interest. Being an employee of a business entity constitutes having a "substantial interest" in that entity. Accordingly, lobbyists Mr. Newby and Ms. Foster both have an interest in Cantey Hanger because they are employed by the firm.
7. The respondent did not disclose Cantey Hanger as an entity in which both she and a lobbyist had an interest on her 2011 PFS and her 2012 PFS. Therefore, there is credible evidence of violations of section 572.023(b)(12) of the Government Code with regard to Cantey Hanger on the 2011 PFS and the 2012 PFS.

Fees Received for Services Rendered to Lobbyist Employers

8. A state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305 of the Government Code, or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305 of the Government Code, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee. GOV'T CODE § 572.024.
9. A state officer "actually knows" that a person or entity reimburses a lobbyist if the state officer has express information to that effect or can acquire that express information through readily available means. Ethics Advisory Opinion No. 333 (1996).

10. The respondent received fees for services rendered from both Newby Davis and Cantey Hanger in 2010 and 2011. Both Newby Davis and Cantey Hanger directly compensated Mr. Newby, a lobbyist, in 2010 and 2011. Cantey Hanger directly compensated Ms. Foster, a lobbyist, during 2011.
11. The respondent acknowledged that she knew that Mr. Newby was a registered lobbyist at the time she filed her 2012 PFS. Although the respondent stated that she did not know that Mr. Newby was a registered lobbyist at the time she filed her 2011 PFS, she could have acquired that information through readily available means. The respondent could also have acquired the information that Ms. Foster was a registered lobbyist in 2011 through readily available means. For example, the respondent had ready access to both Mr. Newby, as her business partner, and Ms. Foster, as an employee of her firm, and could have asked them whether they were lobbyists. Furthermore, the respondent could have made inquiries of the Texas Ethics Commission.
12. The respondent did not disclose Newby Davis or Cantey Hanger as entities from which she received fees for services rendered and which she actually knew directly compensated lobbyists on her 2011 PFS and her 2012 PFS. Therefore, there is credible evidence of violations of section 572.024 of the Government Code regarding both the 2011 and the 2012 PFS.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent neither admits nor denies the facts described under Section III or the Commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) a financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. The account of financial activity includes any corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association, excluding a publicly held corporation, in which both the individual and a person registered under Chapter 305 of the Government Code have an interest; and 2) a state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305 of the Government Code, or to

or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305 of the Government Code, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violation described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$5,000 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31210297.

AGREED to by the respondent on this _____ day of _____, 20____.

Wendy R. Davis, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director