

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

Chase Untermeyer, Chair  
Tom Harrison, Vice Chair  
Hugh C. Akin  
Jim Clancy

Wilhelmina Delco  
Paul W. Hobby  
Bob Long  
Tom Ramsay

## AGENDA

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Date and Time: 8:30 a.m., Wednesday, June 1, 2016  
Location: Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Closed Meeting.** Discussion of pending litigation to seek legal advice relating to the following:
  - A. Cause No. 14-06508-16; *Texas Ethics Commission v. Michael Quinn Sullivan*; in the 158<sup>th</sup> District Court of Denton County, Texas; and related cases, Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-09170, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
  - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*; in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
  - C. Cause No. D-1-GN-14-001252; *Empower Texans, Inc. and Michael Quinn Sullivan v. The 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, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*; in

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For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.

the 53<sup>rd</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00019-CV; *Empower Texans, Inc. and Michael Quinn Sullivan v. The 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, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*, in the Third Court of Appeals, Austin, Texas.

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
  - E. 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.
  - F. 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. 03-16-00139-CV, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
  - G. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201<sup>st</sup> Judicial District Court of Travis County, Texas.
  - H. Cause No. 2016-27417; *Briscoe Cain v. Charles G. Untermeyer, in his Official Capacity as Chairman and Commissioner of the Texas Ethics Commission and Natalia Luna Ashley, in her Official Capacity as Executive Director of the Texas Ethics Commission*; in the 270<sup>th</sup> Judicial District Court of Harris County, Texas.
3. Reconvene in open session.
4. 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: Natalia Luna Ashley, 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.

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## AGENDA

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Date and Time:	10:15 a.m., Wednesday, June 1, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. Comments by the Commissioners.
3. Comments by the Executive Director.
4. Communication to the Commission from the public.
5. Approve minutes for the following meetings:
  - o Executive Session (discussion of pending litigation) – April 8, 2016; and
  - o Public Meeting – April 8, 2016.
6. Discussion and possible action on the approval of a format for electronic filing of campaign finance reports, as proposed by Tarrant County.

### RULEMAKING RELATED TO HOUSE BILL 1295

7. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3 (Definitions), adding a definition for “value” of a contract.
8. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3 (Definitions), amending the definitions of “contract,” “controlling interest,” “intermediary,” and adding a definition for “signed.”
9. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.5

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*For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.*

(Disclosure of Interested Parties Form), to clarify that a description of a contract includes property that does not constitute a service or goods and to amend the timing of notification to the Commission of receipt of a completed disclosure form and certification of filing.

### OTHER RULEMAKING

10. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 8.7 (Request for An Advisory Opinion), adding that Advisory Opinion Requests must include the name of the person making the request and the name of the person on whose behalf the request is made, if applicable.
11. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.1 (Definitions), adding a definition for “school district.”
12. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules § 34.14 (Expenditures for Fact-Finding Trips), defining the meaning of “fact finding trip” for purposes of the lobby law.
13. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 34.5 (Certain Compensation Excluded), regarding the exclusion of certain compensation from the calculation to determine whether a person has exceeded the threshold that requires lobby registration.
14. Public discussion and possible action on the proposal and publication in the Texas Register of a new Ethics Commission Rules § 40.11 (Publicly Traded Corporation as Source of Income over \$500), regarding the identification on a personal financial statement of a publicly traded corporation from which income in excess of \$500 is derived.

### ADVISORY OPINIONS

#### **Discussion and possible action in response to the following Advisory Opinions:**

15. Discussion of Advisory Opinion Request No. 611: Whether the revolving door law prohibits a former employee of the Texas Commission on Environmental

Quality from performing certain services related to the remediation of leaking underground storage tanks.

This opinion request construes Section 572.054 of the Government Code.

16. Discussion of Advisory Opinion Request No. 612: Whether the contingent fee prohibition, as amended by House Bill 3517 adopted during the regular session of the 84th Legislature, prohibits a certain lobby agreement that was effective before September 1, 2015.

This opinion request construes Chapter 305 of the Government Code.

### OTHER POLICY MATTERS

17. Briefing, discussion, and possible action to waive or reduce certain penalties assessed for campaign finance reports, lobby reports and personal financial statements filed late due to issues with the new electronic filing application for the following individuals and political committees:

Adkins, Anthony T. (80156)  
Alonzo, Roberto R. (19681)  
Anyiam, Chika A. (80031)  
Bennett, Patricia Baca (80109)  
Clark, Jeffrey D. (39113)  
Cole, Celia (41888)  
Contreras, Sergio (80481)  
Dunham, Frances V. (70817)  
Gabriel, Devin D. (80146)  
Gardner, Barbara J. (67819)  
Marks, William S. (80336)  
Moquin, Eric B. (80605)  
Piel, Andrew (80194)  
Rose, Toni N. (67987)

18. Briefing, discussion, and possible action on appeals to determinations made under Texas Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following individual and political committee:

Muñoz, Jr., Sergio (65967)  
Hardy, Rebecca, Treasurer, 'TFVC PAC' Texans for Vaccine Choice PAC (80099)

19. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report as originally filed substantially complied with the applicable law for the following political committee:  
  
Midgley, Leslie, Treasurer, Texas Land Title Assn. PAC (16375)
20. Discussion and possible action on the Texas Ethics Commission Strategic Plan for Fiscal Years 2017 – 2021.
21. Discussion and possible action on the Texas Ethics Commission Legislative Appropriation Request for Fiscal Years 2018 and 2019.
22. Appointment of Committee of Commissioners to consider recommendations for statutory changes to the 85<sup>th</sup> Legislature as required by section 571.073 of the Government Code.
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: Natalia Luna Ashley,  
Executive Director

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**The draft meeting minutes are currently available on our website at *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:**

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**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.3. Definitions**

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(g) "Value" of a contract is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract.

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**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.3. Definitions**

(a) "Contract" means a contract between a governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, whichever is earlier, and includes an amended, extended, or renewed contract.

(b) "Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

(c) "Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

(d) "Interested party" means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) an intermediary.

(e) "Intermediary," for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

(1) receives compensation from the business entity for the person's participation;

(2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and

(3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

(f) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

**Text of Proposed Rule**

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

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§46.5. Disclosure of Interested Parties Form**

(a) A disclosure of interested parties form required by section 2252.908 of the Government Code must be filed on an electronic form prescribed by the commission that contains the following:

- (1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;
- (2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;
- (3) The name of each interested party and the city, state, and country of the place of business of each interested party;
- (4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the services, goods, or other property [~~services~~] used by the governmental entity or state agency provided under the contract; and
- (5) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

(b) The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed.

(c) A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the [~~contract for which the form was filed binds all parties to the contract~~] governmental entity or state agency receives the disclosure.

(d) The commission shall make each disclosure of interested parties form filed with the commission under section 2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 8. ADVISORY OPINIONS**

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

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

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, or faxed to the commission at the agency office.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

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

**Subchapter A. GENERAL RULES**

**§ 20.1. Definitions**

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) through (22) (No change.)

(23) School district--For purposes of section 254.130 of the Election Code and sections 20.3 (relating to Reports Filed with the Commission), 20.7 (relating to Reports Filed with Other Local Filing Authority), and 20.315 (relating to Termination of Campaign Treasurer Appointment) of this title, the term includes a junior college district or community college district.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.14. Expenditures for Fact-Finding Trips**

(a) For purposes of Section 305.025(3), Government Code, an expenditure for transportation or lodging provided to a member of the legislative or executive branch is for a fact-finding trip only if:

(1) the expenditure is necessary for the member to obtain information that directly relates to the member's official duties;

(2) the member cannot obtain the information without the expenditure; and

(3) the expenditure is not for the member's attendance at a merely ceremonial event or pleasure trip.

(b) If an expenditure made for transportation or lodging for a fact-finding trip is required to be disclosed on a lobby activities report by Section 305.0061(a), Government Code, the purpose of the transportation or lodging must include a description of the information that the expenditure was necessary to obtain under subsection (a) of this section.

**Text of Proposed Rule**

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

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.5. Certain Compensation Excluded**

(a) Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code § 305.003(a)(2)~~], and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305,]~~ and this chapter:

- (1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;
- (2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;
- (3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;
- (4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;
- (5) providing to a member of the legislative or executive branch information consisting of facts or data that the member requested in writing regarding legislation or administrative action, when the request was not solicited by or on behalf of the person providing the information;

(6) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(7) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(8) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or

(9) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member).

(b) Subsection (a) of this section does not apply to a registrant. A registrant's activity described by subsection (a) is subject to disclosure under chapter 305 of the Government Code and this title.



**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS**

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

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

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

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*June 1, 2016*

*Whether the revolving door law prohibits a former employee of the Texas Commission on Environmental Quality from performing certain services related to the remediation of leaking underground storage tanks. (AOR-611)*

The Texas Ethics Commission (“commission”) has been asked whether the state “revolving door” law would prohibit a former employee of the Texas Commission on Environmental Quality (“TCEQ”) from receiving compensation from a private employer for performing services related to the remediation of leaking underground storage tanks.

#### Background

The former employee who requested this opinion states that she was employed with the TCEQ (and its predecessor agencies, such as the Texas Natural Resource Conservation Commission) from 1991 to 2011. The period of time relevant to this opinion is 2009 to 2011, during which the former employee was a project manager in the TCEQ Remediation Division and worked in the agency’s Responsible Party Reimbursement (“RPR”)<sup>1</sup> and State-Lead (“SL”) programs conducted to clean up leaking petroleum storage tanks (“LPSTs”). The former employee retired from the TCEQ in 2011.

The TCEQ Remediation Division oversees the assessment and cleanup of LPSTs, which include sites that are handled by parties responsible for the site (“RPs”) or by the state. The program’s mission is to supervise the cleanup of spills from regulated storage tanks by recording and evaluating all reported incidents of releases of petroleum and other hazardous substances from underground and above-ground storage tanks. The Remediation Division monitors all reported leaking incidents, from initial environmental assessments through corrective action plans and requests for closure. The requestor states that a remediation at any particular site could last many years and often lasts decades.

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<sup>1</sup> The state had maintained a fund (the Petroleum Storage Tank Remediation fund) to reimburse responsible parties for remediation of contamination resulting from leaking petroleum storage tanks. That particular fund has been discontinued by the legislature and the agency no longer provides the reimbursements. The other relevant remediation program is the Responsible Party Lead (“RPL”) program, in which a “responsible party” must perform remediation or hire contractors to perform remediation without reimbursement from the agency.

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While the RPR program was active, the agency reimbursed an RP for pre-approved expenditures for cleanup of an LPST site. During that process, consultants for the RP would submit a work proposal with estimated costs that were typically approved, as long as the request was reasonable and met all guidelines. An RP could also request to be transferred to the SL program.

If an RP is unknown or unavailable, or is unable or unwilling to conduct the corrective action at the site, then cleanup can be conducted through the SL program, by which the state leads the cleanup effort. Under the SL program, correction actions are directed by TCEQ project managers and the contracts are managed through a contracting program that includes a competitive bidding process. The TCEQ project managers evaluate and approve independent contractors' work plan proposals for site-specific remediation activities, produce work orders, oversee field activities, and review and approve reports, invoices, and other contract-related submittals. The independent contractors can, at a TCEQ project manager's direction, perform such corrective actions as emergency abatement, site investigation, monitoring, remedial action plan development, site remediation, closure, system design and installation, and operation and maintenance.

### Employment at TCEQ

The requestor states that while she was at the TCEQ, she was part of a team that approved claims for reimbursement in the RPR program and approved invoices for payment in the SL program. Her role was primarily to determine whether remediation work had actually been conducted in accordance with guidelines and work proposals in the RPR program or in accordance with work orders in the SL program.

In the RPR program, a consultant for an RP sought reimbursement from the agency for expenses related to narrow remediation tasks, such as the installation of a monitor well. The process generally began when the consultant submitted a work proposal and cost estimate in advance of performing the work, which the requestor would review and make comments and recommendations to the RP. After conducting the work, the consultant would submit a report to the agency, which the requestor would review and make additional comments and recommendations. The consultant would then submit an invoice to receive reimbursement for the work, and the requestor would review reports related to that invoice to verify whether the work had been conducted. The reports usually included a proposal for future action, which the requestor would be required to review and approve if appropriate. In that capacity, the requestor could advise but not require responsible parties to conduct specific work. If the work had been conducted appropriately, other agency staff would approve reimbursement.

In the SL program, the requestor reviewed the same types of reports as in the RPR program to ensure that work orders were appropriately implemented and that the state received the best value for its funds. She worked with and directed state contractors to ensure that sites were appropriately evaluated and remediated within the budgets and

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constraints of the program. The requestor worked with assigned contractors to develop work plan proposals based upon TCEQ guidance and the most recent site data.

### Prospective Employment

The requestor is presently a project scientist for a private firm and wishes to perform services for the firm for compensation that include implementing decisions made by TCEQ project managers in the agency's SL program. Some of those decisions may relate to contaminated sites on which the requestor had worked as a TCEQ employee. The requestor states that the services may include overseeing field staff, reviewing current gauging and analytical data and making recommendations to the TCEQ based on that data, drafting and sealing new reports as a professional geoscientist, assisting TCEQ project managers with developing strategies to remediate sites, and drafting work proposals and invoices after receiving instructions from a TCEQ project manager to submit work order proposals and invoices.

With respect to reviewing reports, the requestor proposes that she might review the same types of reports that she had reviewed as a TCEQ employee for assessment, groundwater monitoring, and product recovery. She also states that the specific activities undertaken as a contractor would be new, such as the installation of new monitor wells, gauging and sampling monitor wells, and new product recovery events. She states that she would not typically review previous reports or invoices in which she had participated as a TCEQ employee, but might be required to review technical recommendations or conclusions that either she or a previous consultant or contractor had made in previous reports to make sure that recommendations on future actions are technically consistent or to explain why a different task should be performed. The requestor also states that her future work might require her to review such a report or invoice to understand the history of a remediation site, but that such a site would mostly be at a state of assessment or remediation that is different from when she would have worked on the site as a TCEQ employee.<sup>2</sup> Given that the requestor's future work might involve sites to which she had been previously assigned as a TCEQ employee, the requestor asks whether the revolving door law would prohibit her from performing services in the RPL or SL programs related to work at such sites.

### Revolving Door Law

Section 572.054(b) of the Government Code states:

A former state officer or employee of a regulatory agency ... may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former

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<sup>2</sup> As an example, the requestor states that a previous report and the data contained in the report are part of a site's history, but that additional information gained from subsequent work, such as the collection of soil or groundwater data, tends to make earlier reports obsolete, except to understand why previous actions or decisions were made.

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officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

Gov't Code § 572.054(b).<sup>3</sup>

A "particular matter" is "a specific investigation, *application*, request for a ruling or determination, rulemaking proceeding, contract, *claim*, charge, accusation, arrest, or judicial or other proceeding." *Id.* § 572.054(h)(2) (emphasis added). "Participated" means "to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." *Id.* § 572.054(h)(1). A "particular matter" refers to a specific proceeding, including a contract, involving the exercise of discretion by an agency, rather than a particular subject matter. Ethics Advisory Opinion Nos. 419 (1999), 397 (1998). Whether a person participated in a "particular matter" as an employee of a state agency depends upon the specific facts.

Returning to the facts in this request, the issue is whether any of the requestor's prospective work for the private employer regards a "particular matter" in which she participated as a TCEQ employee.<sup>4</sup> In the case of the RPR program, the requestor participated in the review of reports and invoices as part of a process by which the agency approved or denied an application or claim for reimbursement of expenses pursuant to TCEQ rules.<sup>5</sup> In that role, the requestor's responsibility was to make a determination as to whether claimed work had been performed. The requestor also provided recommendations to RPs to conduct specific work for which the RPs could seek reimbursement. In the SL program, the requestor reviewed similar reports and invoices to determine whether specific work had been appropriately performed by a contractor so that the agency could pay the contractor for that work. The requestor also directed state contractors to perform specific work.

As indicated by the requestor's facts, the review of a report, invoice, or work order each involved an exercise of agency discretion as to whether particular work had been performed and thus was a "particular matter" in which the requestor participated. A recommendation made to an RP as part of the claim reimbursement process or direction given to a state contractor to perform specific work in the SL program would also constitute a "particular matter" in which the requestor participated. To the extent that a

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<sup>3</sup> The revolving door restriction applies to state employees of executive branch agencies who were compensated over a certain amount prescribed by the General Appropriations Act. *Id.* § 572.054(c)(2). The requestor states that her compensation met or exceeded that amount.

<sup>4</sup> The requestor does not present a specific instance of future services for our consideration, but presents general questions regarding a range of services that she might consider rendering in the future. Accordingly, we can only consider the requestor's circumstances generally.

<sup>5</sup> See 30 T.A.C. §§ 334.301-.322.

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review, recommendation, or direction was a single step within a larger process of approving a claim or application for reimbursement or payment, such a claim or application similarly was a particular matter in which the requestor participated.

The requestor now wishes to work as a contractor to perform corrective actions within the RPL and SL programs that might occur on the same sites where remediation in which she had participated as a TCEQ employee had occurred. She has suggested that future work on a site that requires her to review a report, invoice, or work order that she had reviewed as a TCEQ employee would be prohibited. Thus, the issue is whether the review of a report, invoice, or work order related to a site and the performance of work as a contractor to perform corrective action on the same site are the same “particular matter” as contemplated by the revolving door law.

In prior opinions, we have said that two separate exercises of discretion by an agency, such as two separate contracts, are generally not the same “particular matter,” but rather are separate matters.<sup>6</sup> Similarly, the fact that two matters relate to the same general subject matter of an agency project does not make them part of the same “particular matter.”<sup>7</sup> We assume from the requestor’s facts that a long-term remediation project or a series of remediation projects at a particular site consists of numerous individual exercises of agency discretion, and such a project would not constitute a single “particular matter.” Thus, in our opinion, the requestor is not prohibited from all work on a particular site solely because she, as a TCEQ employee, had reviewed reports, invoices, or work orders or given recommendations or directions related to remediation at that same site. However, whether any prospective future work regards a “particular matter” in which the requestor participated, and is thus prohibited, depends upon the precise nature of the work and the pertinent circumstances. For example, if the requestor had, as a TCEQ employee, made a recommendation or given direction to a consultant or contractor to perform specific work at a site, then the requestor could not carry out that same recommendation or direction for the private firm.

The requestor has also suggested that she would be prohibited from working on a site that would require her to “review” a report that she previously reviewed or approved as a TCEQ employee, including a review of conclusions made in such a report. We have recognized in several opinions, each addressing specific circumstances, that two matters that are “interdependent pieces of a larger project” are considered the same “particular matter” if a former employee’s work on a matter includes the review or analysis of work

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<sup>6</sup> See, e.g., Ethics Advisory Opinion Nos. 364 (1997), 353 (1996).

<sup>7</sup> See, e.g., Ethics Advisory Opinion Nos. 523 (2014) (selecting a consultant to prepare a feasibility study regarding state highway construction project and managing quality assurance for work on the project were two separate matters), 496 (2011) (state road construction projects that were rejected and redesigned were considered separate matters), 345 (1996) (an application for a federal grant and the selection of a contractor through a competitive bidding process related to the same transportation project were separate matters), 324 (1996) (review of permit for landfill and certification of groundwater monitoring system for same landfill were separate matters).

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that the former employee performed on the other related matter.<sup>8</sup> Thus, to the extent that the requestor's review of a report as a TCEQ employee and the future review of that report on behalf of a private firm are interdependent pieces of a larger remediation project, we caution that the review or analysis of a decision, recommendation, or direction made by the requestor would generally be prohibited. For example, if the requestor had previously reviewed a report as a TCEQ employee and, as a private employee working on the same remediation project, evaluates or analyzes the report to determine whether a conclusion she made in the report was correct, then the services would be prohibited.<sup>9</sup>

However, the requestor states that any review of a prior report or invoice would be made for the purpose of understanding the history of a particular site and that the actual remediation work would be based upon current data and site conditions, which would make earlier reports obsolete. In our opinion, the review of a report or invoice solely to obtain historical knowledge for the purpose of performing specific remediation services that are separate from the remediation services that were the subject of the report or invoice would be a separate matter from the requestor's review of the report or invoice performed as a TCEQ employee. Thus, such a historical review would not be prohibited by the revolving door law. Accordingly, assuming that the requestor's review of prior reports or invoices that she had previously reviewed as a TCEQ employee consists only of such a historical review, the revolving door law would not prohibit the requestor from performing those services.<sup>10</sup>

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<sup>8</sup> See Ethics Advisory Opinion Nos. 507 (2012) (former employee may work pursuant to a general engineering consultant contract to oversee a state highway design-build contract in which he was involved if the former employee does not perform review or analysis of essential components of the design-build contract), 496 (2011) (former employee was not prohibited from working on new road projects assuming that the work would not use or incorporate the reports or studies on which she worked as a project manager overseeing environmental assessment related to prior road construction projects in the same area), 397 (1998) (former employee who evaluated consultants seeking to contract with an agency to perform a feasibility study on a project did not participate in a subsequent study of the environmental impact of the alternatives proposed in the feasibility study because his work was unrelated to the substantive conclusions of the feasibility study that were to be examined in the environmental study), 337 (1996) (an audit and an appeal of the findings reached in the audit are part of the same matter).

<sup>9</sup> Similarly, if the requestor, as a private employee working on the same remediation project, reviewed her prior approval of an invoice to determine whether the approval was appropriate, then the services would be prohibited.

<sup>10</sup> We cannot address any TCEQ rules or policies that impose additional restrictions. See also Gov't Code § 2252.901 (prohibiting a state agency from entering into certain contracts). Additionally, we note that section 572.069 of the Government Code prohibits a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased. Gov't Code § 572.069 (eff. September 1, 2015). The requestor's employment with TCEQ ceased prior to the effective date of that law, and we therefore do not address it in this opinion.

## **DRAFT**

### **SUMMARY**

The revolving door law provided by section 572.054(b) of the Government Code does not prohibit a former TCEQ employee from performing certain services described in this opinion on behalf of a private firm related to the remediation of leaking underground storage tanks.



**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** May 25, 2016  
**SUBJECT:** Waiver Requests related to Transition to the New Electronic Filing System  
**Meeting Date:** June 1, 2016

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**CAMPAIGN FINANCE REPORTS**

As you are aware, campaign finance filers began using the new electronic filing application to file campaign finance reports on April 28, 2015. The following campaign finance reports were filed late due to issues related to the transition to the new filing application.

**Staff Recommendation – Waiver (Items 1-2):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

**1. Anthony T. Adkins (80156)**  
**Candidate, State Representative**

Report: semiannual report due January 15, 2016  
 File date: March 18, 2016  
 Activity: contributions = \$2,380.00; expenditures = \$3,128.54;  
 contributions maintained = \$29.81  
 Previous violations: none  
 Penalty: \$500

Mr. Adkins stated that he initially thought he could mail the report. He stated that once he realized it must be filed electronically, he attempted to file but was unable to do so because he did not have his password and login information. He was able to file the report after speaking with the Commission's technical support staff.

**2. Barbara J. Gardner (67819)**  
**Candidate, Court of Appeals Justice**

Report: semiannual report due January 15, 2016  
 File date: March 1, 2016  
 Activity: contributions = -0-; expenditures = \$2,600.00;  
 contributions maintained = -0-  
 Previous violations: none  
 Penalty: \$500

Ms. Gardner stated that she did not receive the e-mail notice regarding the filing deadline. She stated that when she found out the report was overdue, she worked with the Commission's technical support staff to establish her campaign finance password, learn how to use the new filing application, and file the report.

## LOBBY REPORTS

Lobbyists began using the new electronic filing application to file lobby registrations and lobby activities reports on September 14, 2015. The following lobby activities reports were filed late due to issues related to the transition to the new filing application.

**Staff Recommendation – Waiver (Items 3-4):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

**3. Jeffrey D. Clark (39113)  
Lobbyist**

Report: annual lobby activities report due January 11, 2016  
File date: January 14, 2016  
Activity: lobby expenditures = \$812.28  
Previous violations: none  
Penalty: \$500

Mr. Clark stated that he had trouble using the new online filing application for the first time. He stated that he spoke with the Commission's technical support staff who helped him understand how to successfully file the report.

**4. Celia Cole (41888)  
Lobbyist**

Report: annual lobby activities report due January 11, 2016  
File date: January 27, 2016  
Activity: none  
Previous violations: none  
Penalty: \$500

Ms. Cole stated that she did not understand how to file an annual report electronically. She stated that after several tries she spoke with the Commission's technical support staff who assisted her with filing the report.

## PERSONAL FINANCIAL STATEMENTS

Candidates and state officers began using the new electronic filing application to file personal financial statements (PFS) on September 14, 2015. The following PFS reports were filed late due to issues related to the new filing application.

**Staff Recommendation – Waiver (Items 5-14):** Staff recommends waiver based on the fact that the PFS reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the PFS password issues. Note: A filer must log in under a specific "Filer Type" depending on the type of report (COH, PFS, etc.) being filed. For data security purposes, a filer is required to complete a *separate* Form SECURITY to set up the password for each filer type, as needed.

**5. Roberto R. Alonzo (19681)  
State Representative**

Report: personal financial statement due February 12, 2016  
File date: March 15, 2016  
Previous violations: none  
Penalty: \$500

Representative Alonzo stated that before the filing deadline he attempted to submit the security form to establish his PFS password by fax, but the Commission has no record of receiving the submission. He stated that he decided to file the PFS in paper format by mail (the PFS is required to be filed electronically). Representative Alonzo stated that after receiving notice that the PFS was late, he spoke with the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

**6. Chika A. Anyiam (80031)  
Candidate, Criminal District Court Judge**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Mrs. Anyiam stated that she attempted to file the PFS the evening of the filing deadline but was unable to log in to her account. She contacted the Commission's technical support staff on the next business day and received assistance with setting her PFS password and filing the report.

**7. Patricia Baca Bennett (80109)**  
**Candidate, District Judge**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Mrs. Bennett stated that she attempted to file the PFS the same way she files campaign finance reports but was unable to do so. She contacted the Commission's technical support staff on the next business day and received assistance with setting her PFS password and filing the report.

**8. Sergio Contreras (80481)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: April 12, 2016  
Previous violations: none  
Penalty: \$500

Mr. Contreras stated that he could not log in to file the PFS. He contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

**9. Frances V. Dunham (70817)**  
**Candidate, District Judge**

Report: personal financial statement due February 12, 2016  
File date: March 23, 2016  
Previous violations: none  
Penalty: \$500

Ms. Dunham stated that she attempted to file the PFS the same way she files campaign finance reports but was unable to do so. She contacted the Commission's technical support staff and received assistance with setting her PFS password and filing the report.

**10. Devin D. Gabriel (80146)**  
**Candidate, District Judge**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Mr. Gabriel stated that he attempted to file the PFS the same way he files campaign finance reports but was unable to do so. He contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

**11. William S. Marks (80336)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: March 16, 2016  
Previous violations: none  
Penalty: \$500

Mr. Marks stated that he mistakenly believed he was not required to file the PFS. He stated that after receiving the notice regarding the late report, he contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

**12. Eric B. Moquin (80605)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: March 14, 2016  
Previous violations: none  
Penalty: \$500

Mr. Moquin stated that he was unaware that he needed to create a separate profile to file the PFS. He stated that after receiving the notice regarding the late report, he contacted the Commission's technical support staff and received assistance with setting his PFS password and filing the report.

**13. Andrew Piel (80194)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: March 7, 2016  
Previous violations: none  
Penalty: \$500

Mr. Piel stated that when using the new online filing application for the first time he believed he had filed the PFS but did not complete the task due to technical issues. He contacted the Commission's technical support staff and received assistance with filing the report.

**14. Toni N. Rose (67987)**  
**State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 17, 2016  
Previous violations: none  
Penalty: \$500

Representative Rose stated that when using the new online filing application for the first time she believed she had filed the PFS but did not complete the task due to technical issues. She contacted the Commission's technical support staff and received assistance with setting her PFS password and filing the report.

**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** May 25, 2016  
**SUBJECT:** Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)  
**Meeting Date:** June 1, 2016

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The following filers submitted requests to the Commission for an appeal regarding a determination previously made under section 18.25 or 18.26 of the Ethics Commission Rules (relating to Administrative Waiver or Reduction of Fine). The Commission may vote to affirm the determinations made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding the appeal, unless specifically noted in **bold** under the penalty.

**REPORT TYPE II: CRITICAL REPORTS**

**TEC Rules Determination: II-A – Levels Chart - Level 2.5 – Reduction to \$400 (Item 1):**

**1. Sergio Muñoz, Jr. (65967)**  
**State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Prior offenses: as a COH – July 2013 semiannual report (\$500 fine waived by the Commission under I-A, Lev. 1)  
Penalty: \$500 – reduction to \$400

Basis: Critical report; Category A filer; one prior late-filing offense in the last five years; good cause shown.

On April 6, 2016, the Commission sent a determination letter to Representative Muñoz informing him that he is eligible for a reduction of the \$500 late-filing penalty to \$400 under the Ethics Commission Rules. The letter informed Representative Muñoz that the reduced fine would revert to the original amount assessed if he did not remit the payment by May 6, 2016, or submit a request for appeal.

Request for Appeal: On May 6, 2016, the Commission received the appeal. In the appeal, Representative Muñoz stated, "At this time, I would like to respectfully request an appeal regarding late-filing of my Personal Finance Statement due February 12, 2016. Thank you for your consideration."

**TEC Rules Determination: II-B – Levels Chart - Level 2.5 – Reduction to \$300 (Item 2):**

**2. Rebecca Hardy (80099)  
Treasurer, 'TFVC PAC' Texans for Vaccine Choice PAC**

Report: 30-day pre-election report due February 1, 2016  
File date: February 8, 2016  
Activity: contributions = \$390.00; expenditures = \$455.24;  
contributions maintained = \$92.57  
Prior offenses: January 2016 semiannual report (\$500 fine waived under TEC Rule 18.25, I-B, Lev. 1)  
Penalty: \$500 – reduction to \$300

Basis: Critical report; Category B filer; total contributions and expenditures are under \$3,000 for the reporting period; one prior late-filing offense in the last five years; good cause shown.

On March 16, 2016, the Commission sent a determination letter to Mrs. Hardy informing her that she is eligible for a reduction of the \$500 late-filing penalty to \$300 under the Ethics Commission Rules. The letter informed Mrs. Hardy that the reduced fine would revert to the original amount assessed if she did not remit the payment by April 15, 2016, or submit a request for appeal.

Request for Appeal: On April 12, 2016, the Commission received the appeal. In the appeal, Mrs. Hardy stated, "Texans for Vaccine Choice PAC would like an opportunity to appeal before the Commission and offer testimony."

**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** May 25, 2016  
**SUBJECT:** Corrected Reports Memo  
Meeting Date: June 1, 2016

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**Reduction (Item 1)**

**1. Leslie Midgley (16375)**  
**Treasurer, Texas Land Title Assn. PAC**

Report: 8-day pre-election report due February 22, 2016  
Correction date: March 30, 2016 (29 days after election date)  
Activity report #1: contributions = \$113,136.36; expenditures = \$72,214.55;  
contributions maintained = \$263,275.81  
Activity report #2: contributions = \$113,136.36; expenditures = \$82,714.55;  
contributions maintained = \$263,275.81  
Prior corrections: 8-day pre-election reports due May 21, 2012, and October 29, 2012 (1st  
corrections--substantial compliance); 8-day pre-election report due May 21, 2012  
(2nd correction--\$10,000 reduced by the Commission to \$1,000; paid); 8-day pre-  
election report due October 29, 2012 (2nd correction--\$9,600 reduced by the  
Commission to \$1,000; paid); 8-day pre-election report due February 24, 2014  
(substantial compliance); 8-day pre-election report due October 27, 2014  
(substantial compliance); and 8-day pre-election report due December 1, 2014  
(three corrections--substantial compliance)  
Penalty: \$4,100

Ms. Midgley corrected the original report to add under "Committee Activity" on Cover Sheet, Page 2, the names of 26 candidate/officers supported by the PAC in the reporting period and to add four political expenditures totaling \$10,500. The missing expenditures were campaign contributions given to four different candidates in the March 1, 2016, primary election. Ms. Midgley stated that the omissions were due to an inadvertent administrative error. She also stated that the correction was filed within 14 business days of finding the error and the report was filed in good faith and without an intent to mislead or misrepresent the information. The amount of the missing expenditures is approximately 13% of the total expenditures and over \$10,000. The correction was filed almost one month after the primary election. Ms. Midgley has filed nine corrections to 8-day reports in the last five years. **Recommendation Based on Commission Guidelines: reduction to \$1,100.**