

TEXAS ETHICS COMMISSION RULES

CHAPTER 12. SWORN COMPLAINTS



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Promoting Public Confidence in Government

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CHAPTER 12. SWORN COMPLAINTS

Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§12.5. Deadline for Filing a Complaint

(a) The commission has no jurisdiction over an alleged violation:

(1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at the time the commission would vote to initiate a preliminary review of a matter, the allegation would be barred from criminal prosecution by operation of the applicable statute of limitations; or

(2) if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(b) For purposes of this section, a complaint is filed on the date it is hand-delivered to the commission or on the date that it is deposited in the mail or with a common or contract carrier, properly addressed, with postage prepaid.

(c) For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.6. File Date for Purposes of Commission Response Deadline

For purposes of section 571.123 of the Government Code, the file date for a complaint is the date the complaint is received at the agency office.

§12.7. Confidentiality

(a) The commission and its employees shall not communicate any information about a sworn complaint, including whether or not a complaint has been filed, to any person other than the respondent, the complainant, and a witness or potential witness identified by the respondent, the complainant, or another witness or potential witness.

(b) Confidentiality under section 571.140 of the Government Code may be waived only if the complainant and each respondent named in the complaint provide a verified, written waiver of confidentiality to the executive director.

§12.9. Compliance with Open Meetings Law and Open Records Law

(a) The Open Meetings Law, chapter 551 of the Government Code, does not apply to a meeting or decision of the commission in connection with a complaint until written notice of a formal hearing on the complaint is sent to the respondent and complainant.

(b) The Open Records Law, chapter 552 of the Government Code, does not apply to information relating to a complaint until written notice of a formal hearing on the complaint is sent to the respondent and complainant.

§12.11. Delegation to Executive Director

Any duty or power of the commission relating to a complaint that does not require a commission vote is delegated to the executive director.

§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, through the approval of its presiding officer, 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.

§12.15. Appearance of Complainant at Hearing

The commission may grant a complainant the opportunity to be heard at a hearing.

§12.19. Agreements to be in Writing

No stipulation or agreement with respect to any matter in a complaint shall be effective unless it has been:

(1) reduced to writing and signed by each person making the stipulation or agreement, or by that person's authorized representative; or

(2) entered into the record during the course of a hearing.

§12.21. Notice

(a) A notice required to be sent to a complainant under chapter 571 of the Government Code shall be sent to the address most recently provided by the complainant.

(b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director.

(d) A respondent or complainant in a complaint may waive the right under section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means.

§12.23. Hearing in Respondent’s Absence

If a respondent fails to appear at a hearing, the commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty.

§12.25. Waiver of Hearing

A respondent may waive the right to a hearing.

§12.27. Deadline Extension

The executive director may extend a deadline pursuant to §571.136 of the Government Code.

§12.28. Production of Documents During Preliminary Review

(a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the Government Code, commission staff must send to the person from whom records are sought a written request for the production or inspection of documents or other tangible things that:

(1) specifies the items to be produced or inspected, either by individual item or by category, and describes with reasonable particularity each item and category; and

(2) provides a reasonable amount of time, but not less than 30 days, to comply with the request.

(b) The person from whom records are sought must produce or allow the inspection of documents or other tangible things within the person’s possession, custody or control within the time provided in the request, or submit in writing, as appropriate:

(1) objections to those records that are unreasonable, improper, or unnecessary to investigate the complaint; or

(2) that, after a diligent search, no items have been identified that are responsive to the request.

(c) Commission staff shall provide to the commission any response it receives to its request for production or inspection when applying for a subpoena under §571.137(a-1) of the Government Code.

§12.29. Subpoenas

(a) A subpoena issued under §571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b) A subpoena that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

§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 addressing the commission; and

(2) 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.

§12.35. Frivolous Complaint

In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

- (1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;
- (2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the commission;
- (3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;
- (4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;
- (5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and
- (6) any evidence of the complainant's motives in filing the complaint.

§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.

Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

§12.51 Non-Complying Complaint

- (a) A complaint does not comply with the requirements of §571.122 of the Government Code if:
 - (1) the complaint includes an allegation of conduct that the commission has previously determined is not a violation of a statute or rule within the commission's jurisdiction; and

(2) before the complaint was filed the complainant was provided notice that such conduct is an invalid basis for an allegation.

(b) A complainant has been provided notice if, before a complaint is filed, the commission states the basis for rejecting an allegation in a written communication mailed to the complainant at the last address provided to the commission by the complainant, or in a written communication transmitted by electronic mail to the complainant at the last electronic mail address provided to the commission by the complainant.

(c) A complaint determined to be non-complying under subsection (a) of this section is presumed to be a frivolous or bad faith complaint.

§12.52. Response to Notice of Complaint

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

- (1) be in writing;
- (2) admit or deny the allegations set forth in the complaint; and
- (3) be signed by the respondent.

(b) If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response.

(c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the commission may issue an order imposing a penalty for failure to file a complete response.

§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 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) 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) 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.

§12.59. Description of Violation

(a) If a complaint does not include the specific rule or provision of law alleged to have been violated, the complaint must clearly and concisely describe facts that, if true, would constitute a violation of a law administered and enforced by the commission.

(b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient if the correct citation can reasonably be ascertained by the commission. When a complaint erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or provision of law in the notice provided to the respondent.

§12.61. Statement of Facts

(a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice of the law violated and of the manner and means by which the violation allegedly occurred and to afford the respondent a basis on which to prepare a response.

(b) The facts alleged must disclose the specific date or dates on which the alleged violation occurred, if that date is known to the complainant. If the complainant is unable to provide a specific date for the violation, the complaint must disclose a specific period of time during which the alleged violation may have occurred.

(c) The facts alleged may adopt by reference the content of documents submitted with the complaint. However, the allegations must reasonably identify those portions of the document that are relevant to the alleged violation.

§12.67. Copies and Documents Provided by the Commission

(a) The executive director shall provide to a respondent copies of all documents submitted with a complaint unless the executive director determines that certain supporting documents are redundant.

(b) If the executive director determines that supporting documents are redundant, the notice of complaint shall describe the documents and inform the respondent that the documents are available for examination by the respondent at the agency office and that copies will be provided to the respondent on request at the respondent's expense.

(c) Whenever the executive director believes a complainant or respondent may agree a document is not needed, the executive director may ask if the complainant or respondent will waive the right to receive the document.

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 §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.

§12.83. 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.

(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.

Subchapter D. PRELIMINARY REVIEW HEARING

§12.84. Notice of Preliminary Review Hearing

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 45 days before the date of the hearing and must include:

- (1) the date, time, place, and nature of the hearing;

- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) a reference to the particular sections of the statutes and rules involved; and
 - (4) a short and plain statement of the factual matters asserted.
- (b) Commission staff shall provide to a respondent at least 30 days before the date of the hearing:
- (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and
 - (2) copies of all documents expected to be used or introduced as exhibits at the hearing.
- (c) The respondent shall provide to commission staff the contents described by subsections (b)(1) and (b)(2) of this section. The contents must be received by commission staff at least 14 days before the date of the hearing. If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.85. Preliminary Review Hearing

- (a) Commission staff and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.
- (b) Commission staff and the respondent may present an opening and closing statement at a preliminary review hearing.

§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 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) of this section, 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.

Subchapter E. FORMAL HEARING

Division 1. General Procedures

§12.101. Application and Construction

The proceedings of a formal hearing shall be conducted in accordance with this subchapter, Chapter 571 of the Government Code, and Subchapters C-H, Chapter 2001, of the Government Code (the Administrative Procedure Act) only to the extent they are consistent with Chapter 571. In the event of a conflict, Chapter 571 controls.

§12.102. Order of Formal Hearing

As soon as practicable after the commission orders a formal hearing, the executive director shall provide to the parties to the complaint, and to the complainant, a copy of the commission's decision to order the hearing. The decision shall include the date, time, and place of the hearing and be signed by the presiding officer.

§12.103. Notice of Formal Hearing

(a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at least 60 days before the date of the hearing and must include, in addition to the contents required by section 571.126(b) of the Government Code:

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall provide to a respondent and complainant at least 30 days before the date of the hearing:

- (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and
- (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall provide to commission staff the contents described by subsections (b)(1) and (b)(2) of this section. The contents must be received by commission staff at least 14 days before the date of the hearing. If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.117. Formal Hearing: Venue

When the commission orders a formal hearing the commission shall decide whether the formal hearing will be held before the commission or before the State Office of Administrative Hearings.

§12.119. Resolution after a Formal Hearing

The executive director shall dismiss a complaint if the commission fails to adopt a motion under section 571.132 of the Government Code. The dismissal shall state the complaint was dismissed because there were insufficient commission votes to find that there was or was not a violation of law.

Division 2. Scheduling, Filing, and Service

§12.121. Prehearing Conferences

The presiding officer may order that one or more prehearing conferences be held to address any matters prior to the formal hearing, including motions for discovery or subpoenas, motions for sanction, or other matters related to the hearing. The commission shall provide such an order to the parties and the complainant within 5 business days after the decision is made. The order shall include the date, time, and place of the conference and a list of the matters to be addressed at the conference.

§12.123. Scheduling Orders

(a) The following deadlines apply to a prehearing conference or formal hearing, as applicable:

- (1) All motions must be filed with the commission no later than 30 days before the date of the conference or hearing;
- (2) All responses to motions must be filed with the commission no later than 14 days before the date of the conference or hearing; and
- (3) All replies to responses must be filed with the commission no later than 7 days before the date of the conference or hearing.

(b) A scheduling order containing the deadlines under this section shall be included with the notice required by section 571.126 of the Government Code. The presiding officer may amend a scheduling order upon the request of a party for good cause shown. A decision by the presiding officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to the parties to a hearing within 5 business days after the decision is made.

(c) The presiding officer may deny a party's motions, responses, or replies or deny a party's evidence from being admitted into the record of the hearing if the party violates a scheduling order.

§12.125. Filing of Documents

(a) Motions, responses, and other documents in a formal hearing must be filed with the Commission:

- (1) by mail addressed to the commission at P.O. Box 12070, Austin, Texas 78711- 2070;
- (2) by hand-delivery to the commission at 201 East 14th Street, 10th Floor;
- (3) by fax to the commission at (512) 463-5777; or
- (4) by email to a dedicated filing address.

(b) All documents must clearly indicate the sworn complaint number and the name of the respondent for which it is filed.

(c) Time of filing. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by the commission. With respect to documents filed by email, the time and date of filing is the electronic time stamp affixed by the commissions email system. Documents received when the commission is closed shall be deemed filed the next business day.

(d) Non-conforming documents. The commission may not refuse to file a document that fails to conform with this chapter. When a filed document fails to conform to this rule, the executive director or presiding officer may identify the errors to be corrected and state a deadline.

§12.127. Service of Documents

(a) Service on all parties. On the same date a document is filed with the commission, a copy shall also be sent to each party or the party's authorized representative by hand-delivery; by regular, certified, or registered mail; by email, upon agreement of the parties; or by fax.

(b) Certificate of service. A person filing a document shall include a certificate of service that certifies compliance with this section.

(1) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., email, regular mail, fax, certified mail.} {Signature}"

(2) If a filing does not certify service, the commission may:

(A) return the filing;

(B) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(C) send a copy of the filing to all parties.

(c) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party, the commission shall presume that the document was received on the date of filing at the commission.

(2) If a document was served by courier-receipted overnight delivery, the commission shall presume that the document was received no later than the next business day after filing at the commission.

(3) If a document was served by regular, certified, or registered mail, or non-overnight courier-receipted delivery, the commission shall presume that it was received no later than three days after mailing.

(4) If a document was served by fax or email before 5:00 p.m. on a business day, the commission shall presume that the document was received on that day; otherwise, the commission shall presume that the document was received on the next business day.

(d) Burden on sender. The sender has the burden of proving date and time of service.

Division 3. Powers and Duties of Commission and Presiding Officer

§12.131. Powers and Duties of the Presiding Officer

(a) Presiding officer's authority and duties. The presiding officer shall have the authority and duty to:

- (1) conduct a full, fair, and efficient hearing;
- (2) take action to avoid unnecessary delay in the disposition of the proceeding;
- (3) maintain order; and
- (4) rule on prehearing matters.

(b) Presiding officer's powers. The presiding officer shall have the power to regulate the hearing, and the conduct of the parties and authorized representatives, including the power to:

- (1) administer oaths;
- (2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;
- (3) rule on admissibility and other questions of evidence;
- (4) rule on discovery issues;
- (5) issue orders pursuant to this chapter;
- (6) exclude irrelevant, immaterial, or unduly repetitious testimony;
- (7) reasonably limit the time for presentations of evidence or argument;
- (8) order parties to submit legal memoranda and proposed findings of fact and conclusions of law; and
- (9) reopen the record when justice requires, if the commission has not issued a final order.

§12.133. Orders from the Commission

(a) The presiding officer has authority to issue orders to control the conduct and scope of the proceeding, including orders to:

- (1) Rule on motions;
- (2) Impose sanctions;
- (3) Establish deadlines;
- (4) Schedule and conduct pre-hearing or post-hearing conferences;
- (5) Require the pre-filing of exhibits and testimony;
- (6) Set out requirements for participation in the case; and
- (7) Take other steps conducive to a fair and efficient formal hearing.

(b) Record of rulings. Rulings not made orally at a recorded prehearing conference or hearing shall be in writing and issued to all parties of record.

(c) Consolidation or joinder for hearing. The presiding officer may order that cases be consolidated or joined for hearing if:

- (1) there are common issues of law or fact; and
- (2) consolidation or joint hearing will promote the fair and efficient handling of the matters.

(d) Severance of issues. The presiding officer may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.

Division 5. Pleadings and Motions

§12.151. Required Form of Pleadings

(a) Content generally. Written requests for action in a formal hearing shall be typewritten or printed legibly on 8-1/2 x 11-inch paper and timely filed with the commission. Photocopies are acceptable if copies are clear and legible. All filings shall contain or be accompanied by the following:

- (1) the name of the party seeking action;
- (2) the sworn complaint number;

- (3) the parties to the case and their status as commission staff or respondent;
- (4) a concise statement of the type of relief, action, or order desired and identification of the specific reasons for and facts to support the action requested;
- (5) a certificate of service, as required by §12.127(b)(1) of this chapter;
- (6) any other matter required by statute or rule; and
- (7) the signature of the submitting party or the party's authorized representative.

(b) Amendment or supplementation of pleadings. A party may amend or supplement its pleadings as follows:

(1) If a notice of a hearing or other documents provided to the complainant or respondent under section 571.126(b)(2) of the Government Code contain a material defect, the commission may correct the notice or other document and deliver it to the complainant and respondent as soon as practicable and in the same manner as the original notice. If the respondent does not receive the correction at least 10 days before the date of the hearing, the presiding officer may by order reschedule the hearing. The executive director shall notify the parties and the complainant of the date, time, and place of the hearing as soon as practicable.

(2) As to all other matters in a pleading, an amendment or supplementation that includes information material to the substance of the hearing, requests for relief, changes to the scope of the hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the presiding officer.

§12.153. Motions, Generally

(a) Purpose and effect of motions. To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the presiding officer or commission, as applicable, even if the motion is uncontested or agreed.

(b) General requirements for motions. Except as provided in this chapter, or unless otherwise ordered by the presiding officer, all motions shall:

- (1) be filed in writing no later than the applicable deadline; except, for good cause demonstrated in the motion, the presiding officer may consider a motion filed after that time or presented orally at a hearing;
- (2) include a certificate of conference that complies substantially with one of the following examples:

(A) Example one: “Certificate of Conference: I certify that I conferred with {name of other party or other party’s authorized representative} on {date} about this motion. {Succinct statement of other party’s position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the commission for resolution.} Signature.”; or

(B) Example two: “Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party’s authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature.”;

(3) include a reference in the motion’s title to a request for a hearing on the motion if the moving party seeks a hearing; and

(4) include a proposed order sought by the moving party.

(c) Responses to motions. Except as otherwise provided in this chapter or as ordered or allowed by the commission, responses to motions shall be in writing and filed by the applicable deadline. However, if the presiding officer finds good cause has been shown, responses to written motions may be presented orally at hearing.

(d) Other motions. In addition, other types of motions are addressed in other sections of this chapter. If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies.

§12.155. Motions for Continuance and to Extend Time

(a) Contents of a motion for continuance. A request to postpone or delay a hearing or prehearing conference shall include:

(1) a statement of the number of motions for continuance previously filed in the case by each party;

(2) the specific reason for the continuance;

(3) whether the movant is available if the hearing or prehearing conference is continued to the next tentatively scheduled commission meeting;

(4) a certificate of conference that complies substantially with one of the examples set out in §12.153(b)(2) of this subchapter.

(b) Contents of a motion to extend time. A request for more time to file a document or respond to discovery shall include:

(1) a statement of the number of extension requests previously sought in the case by the movant;

- (2) the specific reason for the request;
 - (3) a proposed date for the deadline the movant seeks to extend; and
 - (4) a certificate of conference that complies substantially with one of the examples set out in §12.153(b)(2) of this subchapter.
- (c) Date of filing. Motions for continuance or to extend time shall be filed no later than five days before the date of the proceeding or deadline at issue or shall state good cause for presenting the motion after that time. If the presiding officer finds good cause has been demonstrated, the presiding officer may consider a motion filed after that time or presented orally at the proceeding.
- (d) Date of service. Motions for continuance or extension shall be served in accordance with §12.127 of this chapter. However, a motion for continuance that is filed five days or less before the date of the proceeding shall be served:
- (1) by hand-delivery, fax, or email on the same day it is filed with the commission, if feasible; or
 - (2) if same-day service is not feasible, by overnight delivery on the next business day.
- (e) Responses to motions for continuance. Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the presiding officer, responses to motions for continuance shall be made by the earlier of:
- (1) three days after receipt of the motion; or
 - (2) the date and time of the proceeding.
- (f) Responses to motions to extend time. Unless otherwise ordered by the presiding officer, responses to motions for extension of a deadline are due three days after receipt of the motion.
- (g) A motion for continuance or extension of time is not granted until it has been ruled on by the presiding officer, even if the motion is uncontested or agreed. A case is subject to default or dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance has not been ruled on by the presiding officer, even when the motion is agreed or unopposed.

Division 6. Hearings and Prehearing Conferences

§12.161. Time Allotted to Parties

The presiding officer shall determine the amount of time allotted to each party for the presentation of its case to the commission. Upon request of a party, the presiding officer may adjust the time allotted for good cause shown or for a violation of a rule under this chapter. A determination shall be made by order or orally during the course of the proceeding.

§12.163. Presentation of Evidence

- (a) Presentation by parties. After the resolution of all prehearing matters, each party shall make its presentation during the formal hearing. Commission staff shall make the first opening statement. The respondent or respondent's authorized representative shall then make an opening statement, should the respondent wish to do so at that time. The respondent may reserve the opening statement until the presentation of the respondent's case.
- (b) Following opening statements, commission staff may present evidence in its case. At the conclusion of the presentation of the evidence, commission staff may rest. The respondent or the respondent's authorized representative may then make an opening statement, or, if an opening statement has already been made, present evidence in its defense of the allegations raised in the notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the respondent may rest.
- (c) After both parties have rested their case, commission staff shall make a closing argument. The respondent may then make a closing argument. Commission staff may then make a reply.
- (d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be closed and the case will be turned over to the members of the commission for deliberation and decision.

§12.165. Rules of Evidence

- (a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a formal hearing only to the extent consistent with Chapter 571 of the Government Code.
- (b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the Government Code.

§12.167. Numbering of Exhibits

- (a) Each exhibit to be offered shall first be numbered by the offering party.
- (b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the commission and to each party present at the hearing unless otherwise ordered by the presiding officer.
- (c) Excluded exhibits. An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party.
- (d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

Division 7. Disposition of Formal Hearing

§12.171. Standard of Proof

At a formal hearing, the commission shall determine by preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

§12.173. Default Proceedings

(a) If a respondent to whom a notice of hearing with factual allegations is served or provided fails to appear for the hearing, the commission may proceed in the respondent's absence on a default basis.

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

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

(2) the notice of hearing satisfies the requirements of sections 2001.051, 2001.052, and 571.126 of the Government Code; and

(3) the notice of hearing was:

(A) received by the defaulting party; or

(B) as authorized by Chapter 571 of the Government Code and this chapter, sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the party's last known address as shown by the commission's records.

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

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

§12.175. Resolution of Formal Hearing

(a) As provided by section 571.139 of the Government Code, the commission may deliberate in private regarding the resolution of a sworn complaint or motion, including a dismissal of a complaint, a determination of whether a violation within the jurisdiction of the commission has occurred, and an appropriate penalty upon a finding of a violation. As provided by section 2001.061 of the Government Code, the presiding officer may permit the executive director, general counsel, or other employee of the commission who has not participated in a hearing in the complaint for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

(b) The presiding officer may announce the commission’s decision on the resolution of a sworn complaint or motion after the conclusion of a formal hearing.

(c) The commission should issue a final order within 60 days after the conclusion of a formal hearing.