

TEXAS ETHICS COMMISSION RULES



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Promoting Public Confidence in Government

TABLE OF CONTENTS

CHAPTER 12. SWORN COMPLAINTS	4
Subchapter A. RESPONDENTS' RIGHTS.....	4
§12.1. Notice.	4
§12.2. Representation by Counsel.....	4
§12.3. Ex Parte Communications.....	4
§12.4. Agreements to be in Writing.	5
Subchapter B. FILING AND INITIAL PROCESSING OF COMPLAINT	5
§12.11. Deadline for Filing a Complaint.	5
§12.12. File Date for a Complaint.....	5
§12.13. Description of Violation.....	5
§12.14. Statement of Facts.	5
§12.15. Commission Initiated Complaint.	6
Subchapter C. INVESTIGATION AND DISCOVERY	6
§12.21. <i>Response to Notice of Complaint.</i>	6
§12.22. <i>Written Questions.</i>	6
§12.23. <i>Production of Documents During Preliminary Review.</i>	6
§12.24. Proposed Settlement Before Preliminary Review Hearing.....	7
§12.25. Subpoenas Issued by Commission.....	7
§12.26. Subpoenas Issued by Counsel for the Respondent.....	8
§12.27. <i>Discovery Control Plans, Application.</i>	10
§12.28. <i>Level 1 Discovery Control Plan.</i>	11
§12.29. <i>Level 2 Discovery Control Plan.</i>	11
§12.30. <i>Requests for Disclosure.</i>	12
Subchapter D. PLEADINGS AND MOTIONS.....	12
Division 1 – General Rules	12
§12.31. Purpose and Effect of Motions.....	12
§12.32. Required Form of Motions.....	13
§12.33. Certificate of Conference.	13
§12.34. Motion Deadlines.	13
§12.35. Method of Filing.	14
§12.36. Service of Documents.	14
§12.37. Non-conforming Documents.....	15
§12.38. Amended and Supplemental Filings.	15
§12.39. Application of this Subchapter.....	16
Division 2 – Types of Motions.....	16
§12.41. Motion to Extend Time.	16
§12.42. Motion for Continuance.	16
§12.43. Motion to Dismiss.	17
§12.44. Motion for Summary Disposition.	17
§12.45. Motion for Sanctions.....	19
Subchapter E. HEARINGS	21
Division 1 – General Rules	21
§12.51. Conduct and Decorum.....	21
§12.52. Private Deliberations.....	22
§12.53. Record of Rulings.	22

Division 2 – Powers of the Presiding Officer.	22
§12.61. Selection and Delegation of Presiding Officer.....	22
§12.62. Set Hearings.	22
§12.63. Consolidate or Sever Matters for Hearing.	22
§12.64. Conduct Hearings.....	22
§12.65. Rule on Evidentiary Matters.	23
§12.66. Sign Orders and Subpoenas.	23
Division 3 – Preliminary Review Hearings.	23
§12.71. Notice of Preliminary Review Hearing.....	23
§12.72. Preliminary Review Hearing.....	24
Division 4 – Formal Hearings.	24
§12.81. Order of Formal Hearing.....	24
§12.82. Notice of Formal Hearing.	24
§12.83. Formal Hearing: Venue.....	25
§12.84. Presentation of Evidence.....	25
§12.85. Rules of Evidence.	25
§12.86. Numbering of Exhibits.....	25
Subchapter F. RESOLUTIONS.....	26
§12.91. Agreed Resolutions.	26
§12.92. Resolution of Technical or De Minimis Allegations.	26
§12.93. <i>Default Proceedings</i>	27
§12.94. Final Orders after Formal Hearings.	28

CHAPTER 12. SWORN COMPLAINTS

Subchapter A. RESPONDENTS' RIGHTS

§12.1. 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 to the commission 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 to the commission by the complainant or, if the respondent has provided a different address, to the address most recently provided to the commission 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.

§12.2. 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, telephone number, and state bar number. 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 executive director, 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.

§12.3. Ex Parte Communications.

Neither commission enforcement staff nor respondents may communicate with commissioners or the general counsel outside the presence of the other party for the purpose of influencing a decision on a pending sworn complaint after the commission accepts jurisdiction over an allegation.

§12.4. 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, and filed with the commission; or
- (2) entered into the record during the course of a hearing.

Subchapter B. FILING AND INITIAL PROCESSING OF COMPLAINT

§12.11. 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 not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.12. File Date for a Complaint.

The file date for a complaint is the date the complaint is received by the commission.

§12.13. 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.

§12.14. 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 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.

§12.15. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate 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 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.

Subchapter C. INVESTIGATION AND DISCOVERY

§12.21. 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.

§12.22. Written Questions.

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

§12.23. 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.

§12.24. Proposed Settlement Before Preliminary Review Hearing.

If commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

§12.25. Subpoenas Issued by Commission.

- (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 issued under section 571.137 of the Government Code 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.
- (c) A subpoena sought by commission staff under section 571.137(a) of the Government Code must be requested in writing and may be approved and issued by the unanimous agreement of the chair and vice chair. If either the chair or vice chair does not approve the request, then staff may seek approval through a vote of the commission, in which case the subpoena will be issued upon the affirmative vote of five commissioners.

§12.26. Subpoenas Issued by Counsel for the Respondent.

(a) This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b) A subpoena must be issued in the name of "The State of Texas" and must:

(1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6) identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7) specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8) state the text of § 12.31(i) of this chapter (relating to Purpose and Effect of Motions); and

(9) be signed by the attorney issuing the subpoena.

(c) A subpoena must command the person to whom it is directed to appear and give testimony at:

(1) a preliminary review hearing; or

(2) a formal hearing.

(d) A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

(e) A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f) Service.

(1) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18

years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2) **Deadline for service.** A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3) **Proof of service.** Proof of service must be made by filing either:

(A) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(g) **Response.**

(1) Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2) If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents,

the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or formal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under subsection (g)(4) of this section.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

§12.27. Discovery Control Plans, Application.

(a) As determined by the Executive Director from available information, a sworn complaint that appears to allege only technical or de minimis violations, as defined by §12.92 of this chapter (related to Resolution of Technical or De Minimis Allegation), is governed by a Level 1 discovery control plan. All other sworn complaints are governed by a Level 2 discover control plan.

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

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

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

(e) The terms "interrogatory," "request for admission," "deposition," and "request for production" have the same meaning as applied in the Texas Rules of Civil Procedure, except

that an interrogatory and a request for admission is also considered a written question for purposes of Section 571.1242(f) of the Government Code and §12.22(a) of this Chapter (relating to Written Questions).

§12.28. Level 1 Discovery Control Plan.

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

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

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

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

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

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

§12.29. Level 2 Discovery Control Plan.

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

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

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

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

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

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

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

§12.30. Requests for Disclosure.

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

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

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

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

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

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

Subchapter D. PLEADINGS AND MOTIONS

Division 1 – General Rules

§12.31. 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 executive director, the presiding officer, or by vote of the commission, as applicable, even if the motion is uncontested or agreed.

§12.32. Required Form of Motions.

Written requests for commission action 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) the signature of the submitting party or the party's authorized representative;
- (6) a proposed order sought by the moving party; and
- (7) a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.

§12.33. Certificate of Conference.

Except as provided in this chapter or unless otherwise ordered by the presiding officer, all motions shall include a certificate of conference that complies substantially with one of the following examples:

- (1) 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
- (2) 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."

§12.34. Motion Deadlines.

(a) The following deadlines apply to motions in which a hearing is either sought by a party or scheduled by the presiding officer:

- (1) motions must be filed with the commission no later than 30 days before the date of the hearing;

(2) responses to motions must be filed with the commission no later than 14 days before the date of the hearing; and

(3) replies to responses must be filed with the commission no later than 7 days before the date of the 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) 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) 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 fails to timely file.

§12.35. Method of Filing.

(a) Motions, responses, and other documents in a sworn complaint proceeding must be filed with the commission by emailing it to sworncomplaints@ethics.state.tx.us and including the following information in the subject line:

(1) the sworn complaint number; and

(2) the title of the document.

(b) 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.

§12.36. Service of Documents.

(a) 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; or by email, upon agreement of the parties.

(b) 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) 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) The sender has the burden of proving date and time of service.

§12.37. Non-conforming Documents.

When a filed document fails to conform to the requirements of this subchapter, the executive director may either:

- (1) reject the filing, identify the errors to be corrected and state a deadline for correction;
- or
- (2) accept the filing.

§12.38. Amended and Supplemental Filings.

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, an amendment or supplementation that includes information material to the substance of a hearing, requests for relief, changes to the scope of a 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.

§12.39. Application of this Subchapter.

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.

Division 2 – Types of Motions.

§12.41. Motion to Extend Time.

- (a) The executive director may extend a deadline pursuant to §571.136 of the Government Code.
- (b) 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; and
 - (3) a proposed date for the deadline the movant seeks to extend.
- (c) Motions to extend time shall be filed no later than five days before the date of the deadline at issue or shall state good cause for presenting the motion after that time. If the executive director finds good cause has been demonstrated, the executive director may consider a motion filed after that time.
- (d) Unless otherwise ordered by the executive director, responses to motions for extension of a deadline are due three days after receipt of the motion.
- (e) A motion for continuance or extension of time is not granted until it has been ruled on by the executive director, even if the motion is uncontested or agreed.

§12.42. Motion for Continuance.

- (a) The presiding officer may postpone or delay a hearing.
- (b) A request to postpone or delay a hearing shall include:
 - (1) a statement of the number of motions for continuance previously filed in the case by the movant;
 - (2) the specific reason for the request; and
 - (3) whether the movant is available if the hearing or prehearing conference is continued to the next tentatively scheduled commission meeting.

(c) Motions for continuance shall be filed no later than five days before the date of the proceeding 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.

(d) 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.

(d) A motion for continuance is not granted until it has been ruled on by the presiding officer, even if the motion is uncontested or agreed.

§12.43. Motion to Dismiss.

(a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged violation has no basis in law or fact. An alleged violation has no basis in law if the allegations, if taken as true, together with inferences reasonably drawn from them do not constitute a violation of a rule adopted by or a law administered and enforced by the commission. An alleged violation has no basis in fact if no reasonable person could believe the facts alleged.

(b) A motion to dismiss must identify each alleged violation to which it is addressed, and must state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

§12.44. Motion for Summary Disposition.

(a) Summary disposition shall be granted on all or part of a complaint's allegations if the allegations, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at the formal hearing.

(b) Unless otherwise ordered by the presiding officer:

(1) A party must file a motion for summary disposition at least 45 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: “Notice to parties: This motion requests the commission to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits.”

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the presiding officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

- (1) The presiding officer may order a hearing on a motion for summary disposition and the commission may rule on the motion without a hearing.
- (2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a violation by a preponderance of the evidence.
- (3) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the presiding officer or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The commission shall issue a final decision and written report, including a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.
- (4) If summary disposition is granted on some but not all of the contested issues in a case, the commission shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The commission shall issue an order:
 - (A) specifying the facts about which there is no genuine issue;
 - (B) specifying the issues for which summary disposition has been granted; and
 - (C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the commission shall include in the final decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§12.45. Motion for Sanctions.

- (a) The commission 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 commission 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 §12.51 of this chapter (relating to Conduct and Decorum).

(b) By record vote of at least six commissioners, the commission 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.

(c) 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.

Subchapter E. HEARINGS

Division 1 – General Rules

§12.51. 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.

§12.52. Private Deliberations.

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.

§12.53. Record of Rulings.

Rulings not made orally at a recorded hearing shall be in writing and issued to all parties of record.

Division 2 – Powers of the Presiding Officer.

§12.61. Selection and Delegation of Presiding Officer.

(a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the presiding officer for all hearings.

(b) The chair may appoint another commissioner to preside over a hearing held by the commission.

§12.62. Set Hearings.

The presiding officer may order that one or more hearings be held to address any matters pending in a sworn complaint proceeding, including motions to dismiss, motions for discovery or subpoenas, motions for sanctions, or any other matters related to the proceeding. The commission shall provide such an order to the parties and the complainant within five business days after the decision is made. The order shall include the date, time, and place of the hearing and a list of the matters to be addressed at the hearing.

§12.63. Consolidate or Sever Matters for Hearing.

(a) The presiding officer may order that cases be consolidated or joined for hearing if there are common issues of law or fact and consolidation or joint hearing will promote the fair and efficient handling of the matters.

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

§12.64. Conduct Hearings.

The presiding officer shall have the authority and duty to conduct a full, fair, and efficient hearing, 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) require the prefilings of exhibits and testimony;
- (4) exclude irrelevant, immaterial, or unduly repetitious testimony;
- (5) reasonably limit the time for presentations of evidence or argument;
- (6) reopen the record when justice requires, if the commission has not issued a final order; and
- (7) take other steps conducive to a fair and efficient formal hearing.

§12.65. Rule on Evidentiary Matters.

The presiding officer shall have the power to rule on admissibility and other questions of evidence.

§12.66. Sign Orders and Subpoenas.

The presiding officer may sign previously approved subpoenas and orders.

Division 3 – Preliminary Review Hearings.

§12.71. Notice of Preliminary Review Hearing.

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 30 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 10 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 at least 5 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.

§12.72. 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.

Division 4 – Formal Hearings.

§12.81. 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.

§12.82. 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 file and 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 file and provide to commission staff at least 14 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.

(d) 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.

§12.83. 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.

§12.84. Presentation of Evidence.

(a) 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.

§12.85. 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.

§12.86. 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) 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.

Subchapter F. RESOLUTIONS.

§12.91. Agreed Resolutions.

(a) Upon the affirmative vote of six commissioners, the commission may enter into an agreed resolution with a respondent to settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

§12.92. Resolution of Technical or De Minimis Allegations.

(a) Technical, clerical, or de minimis violations for purposes of §§ 571.0631 and 571.140 of the Government Code means any violation of law under the TEC's jurisdiction that neither materially affects disclosure nor undermines public trust in government.

(b) Examples of technical, clerical, or de minimis violations include:

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

(2) Failure to include a disclosure statement or a highway right-of-way notice 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 file a timely campaign finance report or campaign treasurer appointment if the alleged violations do not materially affect disclosure;

(5) Failure to timely respond to a sworn complaint if the respondent shows good cause for the late response.

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

§12.93. Default Proceedings.

(a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242 or fails to appear for a formal hearing, the commission may, upon notice and hearing, proceed 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 and 2001.052 of the Government Code; and

(3) the notice of hearing was:

(A) received by the defaulting party; or

(B) 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.

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

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

- (A) the respondent had no notice of the hearing;*
- (B) the respondent had no notice of the consequences for failure to appear; or*
- (C) although the respondent had notice, its failure to appear was not intentional or the result of conscious indifference, but due to reasonable mistake or accident that can be supported by adequate proof; and*
- (D) a statement of whether the motion is opposed.*

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

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

(4) A default decision is final

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

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

§12.94. Final Orders after Formal Hearings.

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

(b) 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.