

## **Texas Ethics Commission Statement of Respondent's Rights**

### **Preliminary Review**

The Texas Ethics Commission (Commission) is required to conduct a preliminary review when it receives a written complaint that conforms with legal and technical form requirements and that alleges a violation of a law under the Commission's jurisdiction. Upon receipt of a sworn complaint, the Commission is required to immediately attempt to notify the person against whom the complaint is filed (the "respondent") by telephone or email. Not later than the fifth business day after the date a complaint is filed, the Commission is required to send written notice to both the person who filed the complaint (the "complainant") and the respondent stating whether the complaint complies with the form requirements and, if applicable, whether the Commission's executive director accepts jurisdiction over the complaint.

At any stage of a proceeding, the Commission is required to dismiss a complaint to the extent the complaint alleges a statement, registration, or report violates a law or rule if: (1) the respondent has filed a corrected or amended statement, registration, or report before the Commission accepts jurisdiction over the complaint; and (2) the corrected or amended statement, registration, or report remedies the alleged violation.

If the sworn complaint does not comply with the form requirements, the complainant may resubmit the complaint not later than the 21st day after the date the notice letter is mailed. If the complaint is not resubmitted within the 21-day period, then that complaint will be dismissed.

If the executive director determines that the Commission does not have jurisdiction over the violation alleged in the sworn complaint, the complaint will be dismissed. The complainant or respondent may request that the Commission review the executive director's determination of no jurisdiction. The request for review must be filed not later than the 30th day after the date the complainant or respondent receives the executive director's determination.

If the sworn complaint complies with the form requirements and the Commission's executive director accepts jurisdiction over the complaint, the notice letter will indicate whether the complaint will be processed as a Category One violation or Category Two violation. If the alleged violation is a Category One violation, the respondent must respond to the notice of the complaint not later than 10 business days after receiving the notice. If the alleged violation is a Category Two violation, the respondent must respond to the notice of the complaint not later than 25 business days after receiving the notice. **The response must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. A respondent's failure to timely respond constitutes a separate Category One violation for which a separate civil penalty may be assessed.** The Commission or executive director may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing.

The preliminary review is the initial investigation phase in the process. The preliminary review also presents the Commission and the respondent their first chance to resolve and settle a sworn complaint. Generally, proceedings at a preliminary review hearing performed by the Commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary

review, or preliminary review hearing are confidential and may not be disclosed by Commission members and staff.

A respondent has the right to be represented by counsel retained by the respondent in any proceeding of a complaint. A respondent may by writing submitted to the Commission designate an agent with whom the Commission staff may communicate regarding the complaint. The Commission, at least quarterly until final disposition of a complaint, shall notify the person who filed the complaint and each person who is a subject of the complaint, if any, of the status of the sworn complaint. The Commission is also required to notify both the complainant and respondent of any final disposition of a complaint.

During the preliminary review process, the Commission staff may submit to the respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. The respondent must respond to written questions within 15 business days of receiving them.

During a preliminary review, the law allows the Commission to subpoena records or testimony, under certain circumstances. Before requesting a subpoena, Commission staff must make a written request for the production of documents. The person from whom documents are requested must either produce the documents or allow their inspection, submit objections in writing that the requests are unreasonable, improper, or unnecessary to investigate the complaint, or submit in writing that no items were identified that respond to the request after a diligent search.

If the person from whom documents are requested does not produce the documents, Commission staff may request that the Commission issue a subpoena. When requesting a subpoena from the Commission, Commission staff must provide any response or objection from the person to whom the subpoena is directed. A copy of any subpoena issued must be delivered to the respondent, and a respondent has the right to quash a subpoena as provided by law. A subpoenaed witness who attends a Commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the Commission is entitled to reimbursement from the Commission for the person's reasonable cost of producing the documents. The Commission's ability to issue subpoenas on application by Commission staff continues through the preliminary review hearing. If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the Commission shall report that fact to a district court in Travis County. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

The complaint will be dismissed if there is credible evidence that no violation occurred. If there is credible evidence that a violation did occur, the Commission may offer a proposed agreed resolution to the respondent. Not later than the 120th day after the later of the date the Commission receives the respondent's response to the initial notice of complaint or the respondent's response to written questions, the Commission is required to offer the proposed agreed resolution or dismiss the complaint. If the respondent refuses to accept the proposed resolution or requests a hearing, the Commission must schedule a preliminary review hearing.

## **Preliminary Review Hearing**

Commission rules require Commission staff to provide notice of a preliminary review hearing to a respondent and complainant at least 45 days before the date of the hearing that includes: (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.

Commission rules also require Commission staff to provide the following documents to the respondent at least 30 days before the hearing: (1) a list of proposed witnesses and a brief statement of the nature of their expected testimony; and (2) copies of all documents expected to be used or introduced as exhibits. **The respondent is required to provide the same information to Commission staff at least 14 days before the hearing.** If either Commission staff or the respondent do not comply with these requirements, the Commission may reschedule the hearing or proceed with the hearing but exclude that evidence, unless there is a showing of good cause why the information was not provided. A person entitled to receive notice may waive that right by filing a written waiver with the executive director.

At or after the time the Commission provides notice of a preliminary review hearing, the Commission may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. The Commission may also subpoena documents and examine witnesses. Counsel for the respondent may subpoena a witness to a preliminary review hearing in the same manner as an attorney may issue a subpoena in a proceeding in a county or district court.

At a preliminary review hearing, the respondent has the right to:

- (1) appear in person, and with the assistance of legal counsel if desired;
- (2) present an opening and closing statement; and
- (3) present any written or oral evidence or information relevant to the complaint, including a written statement, examination and cross-examination of witnesses.

During a preliminary review hearing the Commission may consider all submitted evidence related to the complaint, may review any documents or material related to the complaint, and shall determine, by vote of at least six Commissioners, whether there is credible evidence that provides cause for the Commission to conclude that a violation within the jurisdiction of the Commission has occurred.

A respondent may waive the right to a hearing. **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.** The final order will end the case, unless appealed. A respondent has the right to appeal a final order issued by the Commission. To appeal a final decision of the Commission, the respondent or the respondent's agent may file a petition in a district court in Travis County or in the county in which the respondent resides. The petition must be filed not later than the 30th business day after the date the respondent received the final decision.

## **Resolution of Preliminary Review Hearing**

If there is credible evidence for the Commission to determine that a violation has occurred, the Commission is required to resolve and settle the complaint to the extent possible. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for a violation of a law administered and enforced by the Commission. Commission staff will send the respondent a proposed resolution within 10 days after the conclusion of the preliminary review hearing. Unlike a final order issued if a respondent fails to appear or waives their right to a hearing, the proposed order issued after a preliminary review hearing requires the respondent's agreement to become final. If the Commission and respondent cannot reach a resolution the matter will be set for a formal hearing, which is not confidential.

The resolution process is prescribed by Commission rule. Within 30 days of receiving the proposed resolution, the respondent must return to the Commission either: 1) the proposed resolution signed by the respondent; 2) a written counter offer; or 3) a written request that the matter be set for a formal hearing. Commission staff will report to the Commission any written counter offer, staff's recommendation to accept or reject the counter offer, if any, or any written request from the respondent that a matter be set for a formal hearing. Commission staff may request that the Commission set a matter for a formal hearing if the respondent does not reply to the proposed resolution following a preliminary review hearing within 30 days of receiving the proposed resolution.

If there is a finding that there is credible evidence for the Commission to determine that a violation has not occurred, the Commission must dismiss the complaint. If there is a finding that there is insufficient credible evidence for the Commission to determine whether a violation has occurred, the Commission must either dismiss the complaint or promptly conduct a formal hearing.

The executive director must dismiss a complaint if the Commission does not order a formal hearing within 180 days after the conclusion of a preliminary review hearing.