

# Memorandum



Date: February 1, 2008

To: The Honorable Mayor and  
Members of the City Council

Subject: Ethics Advisory Commission Annual Report

In accordance with Chapter 8, Section 8-1.1, the members of the Ethics Advisory Commission are submitting their annual report of the Commission's activities for your review.

A handwritten signature in cursive script that reads 'Calvin C. Bluiett'.

Calvin C. Bluiett, Vice-Chairman  
Ethics Advisory Commission



# **ETHICS ADVISORY COMMISSION**

## **2007**

### **ANNUAL REPORT**

**February 1, 2008**

# **ETHICS ADVISORY COMMISSION**

**2007**

## **ANNUAL REPORT**

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## **ETHICS ADVISORY COMMISSION MEMBERS**

The Ethics Advisory Commission is composed of seven (7) members. The full City Council appoints members to this commission.

**Sid Stahl, Chair** (appointed 05/02/07, resigned 10/15/07)

**1. Calvin C. Bluiett, Vice-Chair**

**2. Rebecca Baird Bergstresser**

**3. Roger Wedell**

**4. Margaret Donnelly**

**5. Linda G. Sorrells**

**6. Gloria M. Tarpley**

**7. =Vacancy=**

## **MISSION STATEMENT**

The Ethics Advisory Commission is a quasi-judicial body having the jurisdiction to review and make findings concerning any alleged violation of the City of Dallas' Code of Ethics. It can make findings concerning any persons subject to the provisions of the Code, including but not limited to current city officials and employees, former city officials and employees and persons doing business with the city. Complaints must be filed within one year after the date of the alleged violation. The Commission may not consider any alleged violation occurring before January 1, 2001 or more than one year before the date of the filing of a complaint.

The Ethics Advisory Commission has the power to:

- 1) Establish, amend and rescind rules and procedures governing its own internal organization and operations in a manner and form consistent with the Code of Ethics.
- 2) Meet as often as necessary to fulfill its responsibilities.
- 3) Request from the City Manager (who obtains personnel from the City Secretary), through the City Council, the appointment of such staff as is necessary to carry out the duties of the Commission.
- 4) Review, index, maintain on file and dispose of sworn complaints.
- 5) Make findings of fact as necessary for the disposition of a complaint.
- 6) Make notifications, extend dead lines and conduct investigations.
- 7) Exert any other powers as are specifically granted in the Code of Ethics.

## SUMMARY OF ACTIVITIES

- 7 EAC meetings were held
- 4 Ethics complaints were received  
(See attached Index of Complaints under Tab 4)
- 5 Preliminary panels were seated.  
(Complaint Vandivort vs. Miller was filed December 29, 2006 but not heard by EAC Preliminary Panel until January 16, 2007)
  - 4 complaints were dismissed for failure to state a claim or provide just cause (or both).
  - 1 complaint was heard at an Evidentiary Hearing by the full EAC, and a written decision was issued by the EAC May 15, 2007. The City Council issued a letter of notification to respondent May 23, 2007.
- Mr. Sid Stahl was appointed Chair of the EAC May 2, 2007 and resigned October 15, 2007

The City Secretary's Office and the City Attorney's Office were directed to modify the following forms:

- Withdrawal of Complaint Form – Section 3.6 was amended to include the following wording stated in Section 3.5 of the Rules of Procedure: the complainant information, the respondent's information, the complainant's statement to withdraw and respondent's statement accepting the withdrawal.
- The Original Complaint Form was amended so that “the standard being sworn to is the standard of information and belief based on credible evidence.” And giving notice that Section 12A-1 of the Code of Ethics (in its entirety) cannot be used as the basis for a complaint, and that an amended complaint must be filed within 7 days after the original complaint is received in the City Secretary's Office.

- The Amended Complaint Form was modified giving notice that Section 12A-1 of the Code of Ethics (in its entirety) cannot be used as the basis for a complaint.
- The Respondent Form was modified to reflect the requirements of Section 3.3 of the Rules of Procedure, that the Respondents statement be sworn under penalty of perjury and subject to criminal prosecution.
- The Preliminary Panel Checklist was modified to include a question asking if the respondent's statement is sworn to.

The City Secretary's Office and the City Attorney's Office are currently working on the following draft forms:

- Evidentiary Hearing Checklist – Exhibit C
- Petition for Declaratory Ruling – Exhibit D

The Ethics Advisory Commission recommended the following changes to the Code of Ethics, which was submitted to the City Council February 23, 2007:

- Section 12A-26 (a) The complaint must be sworn under penalty of perjury and state that the complainant has information and belief, based on credible evidence, that a violation of this chapter has occurred.
- Section 12A-26 (a) (4) identify sources of credible evidence, if any that the complainant recommends should be considered by the ethics advisory commission.

Commissioners were briefed on allowable political activity by elected and appointed officials, as well as City employees.

## ETHICS ADVISORY COMMISSION INDEX OF COMPLAINTS

EAC CASE NUMBER	FILE NUMBER	DATE FILED	COMPLAINT	RESPONDENT	CODE VIOLATION CITED	DATE HEARD	STATUS/OUTCOME
31	07-0214	12/29/06	William B. (Bill) Vandivort, III	Laura Miller	12A-41	01/16/07	Dismissed by Preliminary Panel. "The complaint did not state a claim or provide just cause as Specified by the ethics code."
32	07-0114	01/04/07	Woon H. Song (Love Shines)	Carolyn McKnight Bray, Mark Duebner,  Donald W. Hill,	Article 1 SEC.12A-1(a) (1) & (2) 12A-1(b) (1) (C)(D)(E)&(F) Article II, Sec. 12A-4(a) & Code 1941, Art 19-4 19963. Sec.2-4 Removal from office  Article I. Sec. 12A-1(a)(1),(3) &(5) Sec.12A-1(b)(2)(A),(B),(D),(E) &(F), Article II. Sec.12A-3(d)(8)	01/30/07	Dismissed for failure to state a claim at Preliminary Panel level.
33	07-0216	02/15/07	Craig Kinton	C.W. Whitaker	12A-19(b)(2)(G)	04/13/07	EAC issued a written decision and referred to City Council. Respondent issued a letter of notification.
34	07-2439	05/21/07	Richard P. Sheridan	Ed Oakley	12A-4(a)	06/07/07	Dismissed by the Preliminary Panel. Based upon the evidence submitted, the complaint did not state a claim as specified by the ethics code.
35	07-2520	08/07/07	Mark Spence	Ed Oakley	12A-3 12A-4 12A-16	08/28/07	Dismissed by the Preliminary Panel. Based upon the evidence submitted, the complaint did not state a claim as specified by the ethics code.



# **Exhibit A**

## **Rules of Procedure**



## **ETHICS ADVISORY COMMISSION**

### **RULES OF PROCEDURE**

**CITY OF DALLAS, TX**

**Adopted: 10/27/06**  
**03/30/07(Updated Forms)**  
**04/13/07(Updated Forms)**

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## Section 1 AUTHORITY

The ethics advisory commission shall have jurisdiction to review and make findings concerning any alleged violation of Chapter 12A, "Code of Ethics," of the Dallas City Code by any person subject to those provisions, including but not limited to current city officials and employees, former city officials and employees, and persons doing business with the city, if a complaint is filed within one year after the date of the alleged violation. The commission may not consider any alleged violation that occurred before January 1, 2001 or more than one year before the date of the filing of a complaint.

*[See Dallas City Code, Section 12A-25(a)]*

## Section 2 MEETINGS OTHER THAN HEARINGS

**2.1 Regular Meetings.** The ethics advisory commission shall hold regular monthly meetings, as the responsibilities of the board necessitate, at a location within a city building. The meeting time is 9:00 a.m. on the third Friday of each month, unless the chair cancels the meeting or establishes another meeting time.

*[See Dallas City Code, Section 8-2]*

**2.2 Special Meetings.** Special meetings may be called by the chair at any time, and shall be called by the chair upon the written request of three members of the commission.

*[See Dallas City Code, Section 8-3]*

**2.3 Quorum.** At the beginning of each regular or special meeting, the chair shall determine whether or not a quorum exists in order to properly transact business of the commission. A quorum exists when there are physically present a simple majority of the number of members officially appointed to the commission, regardless of the total number of members actually provided for the commission. If a quorum does not exist 30 minutes after the time for which the meeting was called, the chair shall adjourn the meeting and either re-schedule the meeting at its next regular time or call a special meeting, depending on the circumstances.

*[See Dallas City Code, Section 8-4]*

**2.4 Notice of Meetings.** Notice of all special and regular meetings of the commission shall be published in accordance with the Texas Open Meetings Act.

*[See Dallas City Code, Section 8-7]*

**2.5 Citizen Speakers.** At the discretion of the commission, citizens may speak at regular and special meetings of the commission. Each speaker will have a maximum of three minutes to speak unless the time limit is shortened or extended by a majority vote of the commission.

Citizen speakers and other members of the public attending a commission meeting shall comply with the rules of conduct and decorum set forth in Section 8-25 of the Dallas City Code.

**2.6 Public Character of Meetings and Actions.** All meetings of the commission shall be open to the public unless pertaining to matters authorized under the Texas Open Meetings Act to be discussed in executive session. All actions of the commission shall be public and sufficient copies of the minutes shall be filed with the city secretary, who will make them available to staff members, the news media, and other interested persons upon request.

*[See Dallas City Code, Section 8-6(a)]*

**2.7 Executive Session.** When meeting in executive session, the chair shall publicly announce the category under the Texas Open Meetings Act that permits the executive session, tape record the executive session, and comply with all other requirements of the Texas Open Meetings Act applicable to executive sessions.

*[See Dallas City Code, Section 8-6(b)]*

### ***Section 3 FILING OF COMPLAINTS***

**3.1 Complaint Form.** All complaints must be submitted to the commission through the city secretary's office. The complaint must:

- 1) identify the person or persons who allegedly committed the violation;
- 2) provide a statement of the facts on which the complaint is based;
- 3) to the extent possible, identify the ethics provision or provisions allegedly violated; and
- 4) identify sources of evidence, if any, that the complainant recommends should be considered by the commission.

*[See Dallas City Code, Section 12A-26(a)]*

A person filing a complaint alleging a violation of Chapter 12A of the Dallas City Code shall use the official complaint form provided by the city secretary's office (see Exhibit A). The city secretary's office shall make the complaint form available on the city's website. Audio cassettes, VHS tapes, other media formats, supporting documentation, and all other such information the complainant feels is relevant to the allegation may be submitted together with the complaint. All complaints must be signed, dated, notarized, and sworn to under penalty of perjury.

**3.2 Amended Complaints.** A complaint may be amended only once. An amended complaint must be submitted to the commission through the city secretary's office, on a printed form prescribed by the city secretary's office (see Exhibit B). A complainant may file an amended complaint in accordance with this section for the following reasons:

- 1) to add something to, or withdraw something from, the original complaint that has been filed;
- 2) to correct that which has been incorrectly stated in the original complaint by the complainant;
- 3) to allege a new or additional violation of Chapter 12A of the code, or
- 4) to add a new respondent.

An amended complaint may only be filed within seven days after the city secretary's receipt of the original complaint. The amended complaint will supersede and take the place of the original complaint. Once an amended complaint is filed, all information and allegations contained in the original complaint will no longer be regarded as a part of the evidence or record of the complaint; therefore, it is the duty of the complainant to ensure that all accurate information contained in the original complaint that he or she wishes to be considered by the ethics advisory commission is included in the amended complaint. The deadline established in Section 12A-26(e)(1) for making a preliminary finding on a complaint will automatically be extended another 21 days from the date an amended complaint is received by the city secretary.

The amended complaint must:

- 1) identify the person or persons who allegedly committed the violation; provide a statement of the facts on which the complaint is based;
- 2) to the extent possible, identify the ethics provision or provisions allegedly violated; and
- 3) identify sources of evidence, if any, that the complainant recommends should be considered by the ethics advisory commission.

Audio cassettes, VHS tapes, other media formats, supporting documentation, and all other such information the complainant feels is relevant may be submitted together with the amended complaint. Each amended complaint must be signed, dated, notarized, and sworn to under penalty of perjury.

**3.3 Responses and Procedural Requests.** The person charged in the complaint shall have the opportunity to submit a sworn statement, together with such other information he or she feels is relevant.

This response may be submitted on the respondent form provided by the city secretary's office (see Exhibit C). The city secretary's office shall make the respondent form available on the city's website.

The response should be received in the city secretary's office at least four days before the date of the preliminary panel hearing so that the panel may have sufficient time to review the response. Failure to file the response in a timely manner may result in the continuance or reset of the preliminary panel hearing.

Procedural motions by the respondent to the complaint must be filed with the city secretary's office four days prior to the preliminary panel hearing. The preliminary panel will consider procedural motions before making a finding on the complaint.

Copies of all information provided by the complainant and the person charged in the complaint must be distributed to all parties to the complaint within 10 days after the ethics advisory commission receives the complaint.

*[See Dallas City Code, Section 12A-26(c)]*

**3.4 Notice of Penalty for False Accusations and Responses.** The city secretary shall, in writing, advise the person filing a complaint or an amended complaint that falsely accusing someone of a violation of Chapter 12A may result in criminal prosecution of anyone who knowingly makes a false accusation. The city secretary shall, in writing, advise the person charged in the complaint or amended complaint that falsely responding to the complaint or amended complaint may result in criminal prosecution of anyone who knowingly makes a false response.

*[See Dallas City Code, Section 12A-26(d)]*

**3.5 Withdrawal of Complaints.** After being filed with the city secretary's office, a complaint or amended complaint may not be withdrawn, unless agreed to in writing by the respondent. A request to withdraw a complaint or amended complaint must be made on a form provided by the city secretary's office and must contain the notarized signatures of both the complainant and the respondent (see Exhibit D). The request must be received by the city secretary's office no later than 9:00 A.M. of the last business day before the date scheduled for the preliminary panel meeting at which the complaint or amended complaint will be reviewed.

**3.6 Multiple Complaints.** Multiple complaints that are filed with the city secretary's office within four days of each other may be combined and processed together if:

- 1) The same complainant files the same or substantially similar complaints against multiple respondents; or
- 2) Different complainants file the same or substantially similar complaints against the same respondent.

The determination to combine multiple complaints will be made by the chair, after consultation with the city secretary's office. If combined, one preliminary panel would review all the complaints at one meeting. The preliminary panel, however, would make a finding on each complaint individually as to whether a claim is stated and is supported by just cause.

## Section 4 PRELIMINARY PANEL MEETINGS

**4.1 Preliminary Panel Selection.** The city secretary selects the chair or vice-chair of the ethics advisory commission (on a rotational basis) and two other commission members (by lot) to serve on a preliminary panel. The chair is recused from serving on a preliminary panel for any complaint filed against the mayor. If the chair, the vice chair, or both are unable to serve on a preliminary panel, the appropriate number of commission members shall be selected by lot by the city secretary as substitutes on the panel. The preliminary panel must always have three members.

*[See Dallas City Code, Section 12A-26(e)(1)&(3)]*

A commission member (including the chair and vice-chair) selected for a preliminary panel shall serve on that panel, unless excused in writing by the chair for valid medical, business, or personal reasons. The chair must be excused in writing by the vice-chair if he or she cannot serve on a panel.

**4.2 Responsibilities of Preliminary Panel.** Within 21 days after receipt of a complaint or amended complaint, the preliminary panel must meet and make a preliminary finding as to whether or not the complaint states a claim under Chapter 12A and is supported by just cause. "Just cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under Chapter 12A.

*[See Dallas City Code, Section 12A-26(e)(1) and (2)]*

**4.3 Preliminary Panel Meetings.** The city secretary shall give all parties at least 10 days notice of a preliminary panel meeting.

The meeting of a preliminary panel is an open meeting, which must be posted at least 72 hours in advance.

At a preliminary panel meeting, the panel will not take any testimony and will consider only the complaint(s), amended complaint(s), response(s), and procedural motion(s) as submitted to the city secretary's office.

The panel will examine the complaint and determine whether or not it complies with the form and jurisdictional requirements of Chapter 12A by completing a preliminary panel checklist (see Exhibit E). If multiple complaints are being considered, the panel may choose to complete the checklist for all complaints before deliberating the individual complaints.

The checklist shall include:

- Utilization of City of Dallas complaint form
- Determination that the complaint form is properly sworn



- Establishment of residency of complainant and/or whether the complainant does business or attempts to do business with the city of Dallas
- Determination whether respondent is a current or former city official or employee
- Determination whether a statement of facts is provided in the complaint
- Establishment that alleged violations meet the one-year statute of limitations guideline set by Chapter 12A
- Date(s) of alleged violation(s)
- Section(s) of Chapter 12A alleged to have been violated
- Additional sections of Chapter 12A deemed by the preliminary panel to have been violated
- Identification of any sources of evidence the complainant recommends should be considered by the commission

In determining whether the complaint states a claim and is supported by just cause, the panel will consider each section of Chapter 12A that the complainant alleges has been violated. The panel should also consider whether other sections of Chapter 12A not alleged by the complainant may have been violated based on the facts presented in the complaint.

If the preliminary finding is that the complaint does not state a claim under Chapter 12A or is not supported by just cause, based upon the statements and evidence submitted, the complaint must be dismissed. A determination that a complaint be dismissed can only be made upon the affirmative vote of at least two of the three preliminary panel members. Written notice of the dismissal must be sent to both the person who made the complaint and the person about whom the complaint was made, identifying the reason or reasons for dismissal.

*[See Dallas City Code, Section 12A-26(e)(2)]*

If a complaint is not summarily dismissed, the panel will forward the complaint to the full commission for an evidentiary hearing.

*[See Dallas City Code, Section 12A-27(a)]*

The preliminary panel will complete and sign the preliminary panel findings template to document its findings on each complaint (see Exhibit F).

**Section 5 ETHICS ADVISORY COMMISSION HEARINGS**

*[Reserved.]*

**Section 6    PETITION FOR DECLARATORY RULING**

*[Reserved]*

## **Section 7 CITY STAFF PARTICIPATION**

**7.1 City Secretary Participation.** The city secretary's office shall provide administrative support to the commission as is necessary to carry out the duties of the commission. The city secretary shall be represented at all meetings and hearings of the commission to provide support, clarify issues and concerns, swear in witnesses at hearings, and maintain records of the meetings and hearings.

*[See Dallas City Code, Section 12A-25(c)(3)]*

**7.2 City Attorney Participation.** The city attorney's office shall act as the legal counsel to the commission. The city attorney shall be represented at meetings and hearings of the commission as needed to provide legal advice when appropriate and to clarify issues and concerns.

*[See Dallas City Code, Section 12A-32(a)]*

**7.3 Independent Counsel.** An independent outside attorney, who does not otherwise represent the city, may be appointed by the city council, at the recommendation of the city attorney, to serve as legal counsel to the ethics advisory commission for a particular case whenever:

a complaint is filed relating to:

an alleged violation of Chapter 12A by a city council member; or

an alleged violation of Chapter 12A by a city employee who is a department director or of higher rank;

the ethics advisory commission requests such an appointment; or

the city attorney requests such an appointment for good cause shown.

*[See Dallas City Code, Section 12A-32(b)]*

Whenever an independent outside attorney is appointed under this section to serve as the commission's legal counsel regarding a particular complaint, the deadline established in Section 12A-26(e)(1) of the city code for making a preliminary finding on the complaint will automatically be extended until 21 days after the date of appointment of the independent outside attorney.

# **Exhibit B**

## **Letter to Council and Draft Amendment to Chapter 12A-26(a)**

February 23, 2007

Honorable Mayor and  
Members of the Dallas City Council  
Dallas City Hall  
500 Marilla  
Dallas, TX 75201

MAYOR AND MEMBERS OF THE DALLAS CITY COUNCIL:

On behalf of the members of the Dallas Ethics Advisory Commission, I am submitting for your consideration a draft amendment to Section 12A-26(a) of the Dallas City Code that would clarify the degree of knowledge required to file an ethics complaint.

Serving on the commission the past few years and hearing allegations against employees and city officials has provided all of the commission members with enhanced insight and firsthand knowledge on the process for filing and hearing complaints. The commission members became concerned about requiring a complainant to have personal knowledge of an ethics violation in order to file an ethics complaint and met on October 27, 2006, February 2, 2007, and February 16, 2007 to discuss amending Chapter 12A, "Code of Ethics," of the Dallas City Code to allow a complainant to file an ethics complaint if he or she has information and belief, based on credible evidence, that a violation of the ethics code has occurred. The complaint would still be required to be sworn under penalty of perjury.

Based upon these discussions, the commission requested the city attorney's office to draft the attached proposed ordinance, which the commission has voted unanimously to recommend to the city council for adoption. The commission members welcome the opportunity to meet with the city council as a whole, during a committee meeting, or with individual members about the proposed ordinance.

For your convenience, I have attached a current list of the commission members with telephone numbers for contact purposes, or you may convey your wishes to the city secretary regarding how you wish to proceed with our recommendation.

**Honorable Mayor and  
Members of the Dallas City Council  
February 23, 2007  
Page 2**

It has been a pleasure serving as a member and vice-chair of the commission, and I look forward to hearing from you.

Sincerely,

*Calvin Bluiett*

Calvin Bluiett  
Vice-Chair, Ethics Advisory Commission

C: Ethics Advisory Commission Members  
Deborah Watkins, City Secretary  
Mary K. Suhm, City Manager  
Thomas P. Perkins, Jr., City Attorney

2/16/07

ORDINANCE NO. \_\_\_\_\_

An ordinance amending Section 12A-26 of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended; clarifying the degree of knowledge required to file an ethics complaint with the ethics advisory commission; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 12A-26, "Complaints," of Article VII, "Ethics Advisory Commission," of CHAPTER 12A, "CODE OF ETHICS," of the Dallas City Code, as amended, is amended to read as follows:

"SEC. 12A-26. COMPLAINTS.

(a) Filing. Any resident of the city or any person doing business or attempting to do business with the city (other than an ethics advisory commission member) who believes there has been a violation of this chapter may file a [sworn] complaint [~~under the penalty of perjury.~~] with the city secretary. The complaint must be sworn under penalty of perjury and state that the complainant has information and belief, based on credible evidence, that a violation of this chapter has occurred. The complaint must:

- (1) identify the person or persons who allegedly committed the violation;
- (2) provide a statement of the facts on which the complaint is based;
- (3) to the extent possible, identify the ethics provision or provisions allegedly violated; and
- (4) identify sources of credible evidence, if any, that the complainant recommends should be considered by the ethics advisory commission.



(b) Confidentiality. No city official or employee shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties or as required by law. *Ex parte* communications by or to members of the ethics advisory commission are prohibited by Section 12A-27(c) of this chapter. All papers and communications relating to a complaint must be treated as confidential unless required to be made public under the Public Information Act (Chapter 552, Texas Government Code) or other applicable law.

(c) Notification. The city secretary shall promptly forward a copy of a complaint to the chair of the ethics advisory commission and to the person charged in the complaint. The person charged in the complaint shall have the opportunity to submit a sworn statement, together with such other information he or she feels is relevant. Copies of all information provided to the ethics advisory commission by the complainant and the person charged in the complaint must be distributed to all parties to the complaint within 10 days after the ethics advisory commission receives the information.

(d) False accusations and responses. The city secretary shall, in writing, advise the person filing the complaint that falsely accusing someone of a violation of this chapter may result in criminal prosecution of anyone who knowingly makes a false accusation. The city secretary shall, in writing, advise the person charged in the complaint that falsely responding to a complaint may result in criminal prosecution of anyone who knowingly makes a false response.

(e) Summary dismissal.

(1) Within 21 days after receipt of a complaint, either the chair or vice chair, selected on a rotational basis, and two commission members, selected by lot by the city secretary, shall make a preliminary finding as to whether or not the complaint states a claim under this chapter and is supported by just cause. "Just cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter.

(2) If the preliminary finding is that the complaint does not state a claim under this chapter or does not have just cause, based upon the statements and evidence submitted, the complaint must be dismissed. A determination that a complaint be dismissed can only be made upon the affirmative vote of at least two of the three preliminary panel members. Written notice of the dismissal must be sent to both the person who made the complaint and the person about whom the complaint was made, identifying the reason or reasons for dismissal.

(3) The chair is recused from serving on a preliminary panel for any complaint filed against the mayor, except that the chair may participate in discussions and voting on a complaint against the mayor when it is being considered by the commission as a whole. If the chair, the vice chair, or both are unable to serve on a preliminary panel, the appropriate number of ethics commission members shall be selected by lot by the city secretary as substitutes on the panel. The preliminary panel must always have three members."

SECTION 2. That CHAPTER 12A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER I of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By \_\_\_\_\_  
Assistant. City Attorney

Passed \_\_\_\_\_

LC/DCC/00405A

DRAFT

# **Exhibit C**

## **Evidentiary Hearing Findings Checklist**



**ETHICS ADVISORY COMMISSION**  
**Evidentiary Hearing Findings**

---

(FILE NUMBER)

Complainant: \_\_\_\_\_

Respondent: \_\_\_\_\_

Date ethics complaint filed: \_\_\_\_\_

Response filed: yes/no \_\_\_\_\_ Date filed: \_\_\_\_\_

**COMPLAINT FILED WITH ETHICS ADVISORY COMMISSION**

Section 12A-26(a) of the Dallas City Code provides in part:

*(a) Filing. Any resident of the city or any person doing business or attempting to do business with the city (other than an ethics advisory commission member) who believes there has been a violation of this chapter may file a sworn complaint, under penalty of perjury, with the city secretary.*

On \_\_\_\_\_, \_\_\_\_\_  
(DATE COMPLAINT FILED) (NAME OF COMPLAINANT)

(a resident of the city/person doing business with or attempting to do business with the city of Dallas) filed a sworn complaint with the office of the City Secretary against

\_\_\_\_\_, pursuant to Section 12A-26(a) of  
(NAME OF RESPONDENT AND CITY POSITION)

the Dallas City Code. The complaint alleged that \_\_\_\_\_  
(NAME OF RESPONDENT)

violated the following sections of the code of ethics (Chapter 12A, Dallas City Code):

_____	_____
_____	_____
_____	_____

## EVIDENTIARY HEARING ETHICS PANEL

### SEC. 12A-27 HEARING PROCEDURES.

(a) Evidentiary hearing. If a complaint is not summarily dismissed under Section 12A-26(e), it will be pursued further at a hearing before the ethics advisory commission. Not less than 10 days before the hearing, the commission shall, by certified mail or personal service, give written notice of the hearing to both the person who made the complaint and the person about whom the complaint was made. The notice must state the specific provision or provisions of this chapter alleged in the complaint to have been violated, as determined by the preliminary panel.

(b) Notice of charges. Before the commission may find that a violation of a particular provision of this chapter occurred, the person charged in the complaint must have notice that compliance with that provision is in issue and be given an opportunity to respond. Notice of the violation of a particular provision is conclusively established if:

(1) the complaint alleged that the provision was violated; or

(2) the ethics advisory commission or its legal counsel provides the person charged in the complaint with written notice of the alleged violation of the provision and with a 10-day period within which to respond in writing to the charge.

(c) *Ex Parte* communications. It is a violation of this chapter for:

(1) the complainant, the person charged in the complaint, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in any *ex parte* communication about the subject matter of a complaint with a member of the ethics advisory commission; or

(2) a member of the ethics advisory commission to:

(A) knowingly entertain an *ex parte* communication prohibited by Subsection (c)(1); or

(B) knowingly communicate, directly or indirectly, with any person, other than a member of the commission, its staff, or its legal counsel, about any issue of fact or law relating to the complaint. (Ord. 24316)

## **SEC. 12A-28. HEARING RULES.**

(a) Hearings on complaints. The rules contained in this section apply to all hearings of the ethics advisory commission on complaints not summarily dismissed under Section 12A-26(e).

(b) General rules. A determination that a violation of this chapter has occurred can be made only upon an affirmative vote of at least three-fifths of the commission members present and voting, otherwise the complaint must be dismissed. A finding that a violation occurred must be supported by clear and convincing evidence. "Clear and convincing evidence" means that measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.

(c) Procedural rules. A quorum of four commission members must be present for a hearing. Any member of the commission who is not present at a hearing on a complaint may not participate in any discussion, voting, or disposition regarding the complaint. All witnesses must be sworn, and the members of the ethics advisory commission or its legal counsel shall conduct questioning of witnesses. The commission is not bound by the rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing, subject to Subsections (d) and (e) of this section.

(d) Rights of the person charged. The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present and cross-examine witnesses, and the right to be represented by legal counsel or another advisor.

(e) Rights of the complainant. The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except to represent the complainant while testifying. The complainant may not present or cross-examine witnesses, except with the permission of the commission. (Ord. 24316)

## **SEC. 12A-29. DISPOSITION OF COMPLAINT.**

(a) Written decision. The ethics advisory commission shall make all reasonable efforts to issue a written decision within 45 days after receipt of a complaint. The commission shall state its findings in the written decision. The written decision must either:

- (1) dismiss the complaint, with the grounds for dismissal set forth in the decision; or
- (2) find that there has been a violation of this chapter and identify in the decision the particular provision or provisions violated.

(b) Notification. Within 10 days after issuing a written decision, the ethics advisory commission shall forward copies of the findings and decision to the complainant, the person charged in the complaint, the city attorney, the city council, the person or body to whom the particular complaint must be referred under Section 12A-30(a), and any member of the ethics advisory commission who did not participate in the disposition of the complaint. A copy of the findings and decision must also be forwarded to the city secretary, who shall make it available to the public as authorized by law.

(c) Similar charges barred. If the complaint is dismissed because the evidence failed to establish a violation of this chapter, the ethics advisory commission shall not entertain any other similar complaint based on substantially the same evidence. (Ord. Nos. 24316; 25236)

Commission meeting date: \_\_\_\_\_

Commission meeting location: \_\_\_\_\_

Commission meeting called to order at: \_\_\_\_\_ AM/PM

Commission members present are:

Chair/Vice-Chair: \_\_\_\_\_,

Vice Chair/Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

Commission Member \_\_\_\_\_,

City staff present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

On \_\_\_\_\_, the commission members reviewed the  
(DATE OF EVIDENTIARY HEARING)

Evidence of the complaint filed by \_\_\_\_\_  
(NAME OF COMPLAINANT)

against \_\_\_\_\_.  
(NAME OF RESPONDENT)

**Motion 1**

\_\_\_\_\_ moved and \_\_\_\_\_  
(COMMISSION MEMBER) (COMMISSION MEMBER)

seconded that the complaint alleging violations of the following sections of the code of ethics are/are not supported by clear and convincing evidence:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Evidence fails to state a claim under Chapter 12A of the Dallas City Code.

\_\_\_\_\_ Evidence is not supported by just cause.

Motion passed/failed with \_\_\_\_\_  
(COMMISSION MEMBERS)

voting for the motion and \_\_\_\_\_  
(COMMISSION MEMBERS)

voting against the motion.

**Motion**

\_\_\_\_\_ moved and \_\_\_\_\_  
(COMMISSION MEMBER) (COMMISSION MEMBER)

seconded that as to the following sections of the code of ethics:

- a) **alleged** by the complainant to have been violated;
- b) **and/or b)** deemed by the panel to have been potentially violated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

the complaint: \_\_\_\_\_ **States a claim and is supported by just cause.**

Motion passed/failed with \_\_\_\_\_  
(COMMISSION MEMBERS)



voting for the motion and \_\_\_\_\_  
(COMMISSION MEMBERS)

voting against the motion.

**CONSEQUENTLY, THE COMPLAINT IS:**

\_\_\_\_\_ **DISMISSED.**

\_\_\_\_\_ **REFERRED WITH A WRITTEN DECISION AND RECOMMENDATION  
IN ACCORDANCE WITH SECTIONS 12A-30.**

- \_\_\_\_\_, Chair/Vice-chair
- \_\_\_\_\_, Vice Chair/Commission Member
- \_\_\_\_\_, Commission Member
- \_\_\_\_\_, Commission Member
- \_\_\_\_\_, Commission Member
- \_\_\_\_\_, Commission Member
- \_\_\_\_\_, Commission Member
- \_\_\_\_\_, Commission Member

Signed and dated: \_\_\_\_\_

Motion to adjourn made by \_\_\_\_\_ and seconded by  
(COMMISSION MEMBER)

\_\_\_\_\_. The meeting was adjourned at \_\_\_\_\_ AM/PM.  
(COMMISSION MEMBER)

# **Exhibit D**

## **Petition for Declaratory Ruling**



**CITY OF DALLAS  
ETHICS ADVISORY COMMISSION**

For Official Use Only

**PETITION FOR DECLARATORY RULING**

*In accordance with Section 12A-31 (code of ethics) of the Dallas City Code, " any city official or employee against whom public allegations of ethics violations have been made in the media or elsewhere has the right to file a sworn statement with the city secretary affirming his or her innocence, and to request the ethics advisory commission to review the allegations and make known its findings."*

Please type or print legibly in blue or black ink.

**PART A – CITY OFFICIAL OR EMPLOYEE INFORMATION**

Your full name (print) (Identifies you as the Petitioner)

---

Your residence address (Street, City, State and Zip Code)      County

---

Your business address (Street, City, State and Zip Code)      County

---

Business phone #

Residence phone #

---

(Check One)

Fill in Appropriate Information

<input type="checkbox"/>	Elected Official	Office Held	
<input type="checkbox"/>	Appointed Official	Board or Commission/ Title	
<input type="checkbox"/>	City Employee	Title/Department	

**PART B – PERSON MAKING ALLEGATION**

Full name of person who made a public allegation against you:

---

Residence address (Street, City, State and Zip Code)

County

---

Business address (Street, City, State and Zip Code)

County

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**PART C – PUBLIC ALLEGATION MADE AGAINST YOU**

I DECLARE THAT THE FOLLOWING PUBLIC ALLEGATION(S) OF ETHICS VIOLATIONS HAVE BEEN MADE AGAINST ME:

Provide a statement detailing the specifics of the public allegation(s) made against you. Describe the events in the order in which they occurred. Keep dates and events in sequence. Include full names, addresses and phone numbers of all individuals involved, including witnesses present when allegations were made. Be factual. The information you provide in this statement must be based on facts and not on personal conjecture. Try to answer the questions "who", "what", "where", and "when". Attach extra sheets if more space is needed.

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**PART D - SOURCES OF EVIDENCE**

Identify sources of evidence, if any, that you believe should be considered by the Ethics Advisory Commission. Submit all information that you have; attach photocopies of any pertinent papers or documentation to support this petition.

DRAFT

I CERTIFY THAT I HAVE READ THIS STATEMENT, I FULLY UNDERSTAND ITS CONTENTS, AND I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF TEXAS THAT THE FOREGOING STATEMENTS AND PHOTOCOPIES OF ATTACHED DOCUMENTS ARE TRUE AND CORRECT. I UNDERSTAND THAT A COPY OF THIS PETITION WILL BE SENT TO THE CHAIR OF THE ETHICS ADVISORY COMMISSION AND TO THE INDIVIDUAL WHO MADE THESE ALLEGATIONS. ALL PAPERS AND COMMUNICATIONS RELATING TO THIS PETITION MUST BE TREATED AS CONFIDENTIAL TO THE EXTENT ALLOWED BY LAW.

\_\_\_\_\_  
Signature

Before me the undersigned authority, on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, personally appeared, \_\_\_\_\_, known to me to be the person whose name is subscribed hereto, and being duly sworn stated that he/she has personal knowledge of the facts hereinabove and that such facts are true and correct.

\_\_\_\_\_  
Notary Public

<NOTARY SEAL>

\_\_\_\_\_  
County, Texas

My Commission expires:  
\_\_\_\_\_

Should you have any questions concerning this form, please contact the City Secretary's Office, at (214) 670-3738 during regular business hours (8:15am – 5:15pm).

Upon completing **ALL** sections of this form, please hand deliver or send by certified mail with any attachments to:

Office of the City Secretary  
CITY HALL  
1500 Marilla Avenue – Suite 5DS  
Dallas, TX 75201