

Subchapter A. GENERAL PROVISIONS AND DEFINITIONS.

§22.3. Standards of Conduct.

(a) **Standards of Conduct for Parties.**

- (1) Every person appearing in any proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.
- (2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) **Communications.**

- (1) **Personal Communications.** Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by the APA, §2001.061. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:
 - (A) name and address of the person contacting the commission;
 - (B) name and address of the party or business entity represented;
 - (C) case, proceeding, or application, if available;
 - (D) subject matter of communication;
 - (E) the date of the communication;
 - (F) the action, if any, requested of the commission; and,
 - (G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.
- (2) **Ex parte communications.** Unless required for the disposition of ex parte matters authorized by law, members of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence.
- (3) **Communications with SOAH administrative law judges.** Communications between SOAH administrative law judges and employees of the commission who have not participated in any hearing in the case shall be in writing or be recorded. Written communication should be the primary and preferred format. All oral communications shall be recorded, and a table of contents maintained for each recording. All such communication submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued. Number running procedures conducted pursuant to written commission policy by employees of the commission who have participated in any hearing in the case do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

- (c) **Standards for Recusal of Administrative Law Judges.** An administrative law judge shall disqualify himself or herself or shall recuse himself or herself on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.

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- (d) **Standards for Recusal of Commissioners.** A commissioner shall recuse himself or herself from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:
- (1) the commissioner in fact lacks impartiality, or the commissioner's impartiality has been reasonably questioned;
 - (2) the commissioner, or any relative of the commissioner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the commissioner has any other interest that could be substantially affected by the determination of the issue; or
 - (3) the commissioner or a relative of the commissioner has participated as counsel, advisor, or witness in the proceeding or matter in controversy.
- (e) **Motions for Disqualification or Recusal of an Administrative Law Judge.**
- (1) Any party may move for disqualification or recusal of an administrative law judge stating with particularity the grounds why the administrative law judge should not sit. The grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.
 - (2) The motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party, or within 15 working days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmittal, or overnight courier delivery.
 - (3) Written responses to motions for disqualification or recusal shall be filed within three working days after the receipt of the motion. The administrative law judge may require that responses be made orally at a prehearing conference or hearing.
 - (4) The administrative law judge shall rule on the motion for disqualification or recusal within six working days of the filing of the motion.
 - (5) The administrative law judge shall not rule on any issues that are the subject of a pending motion for recusal or disqualification. SOAH shall appoint another administrative law judge to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.
 - (6) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.
 - (7) If the administrative law judge determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be sanctioned in accordance with §22.161 of this title (relating to Sanctions).
 - (8) Disqualification or recusal of an administrative law judge, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.
- (f) **Motion for Disqualification or Recusal of a Commissioner.**
- (1) Any party may move for disqualification or recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. The grounds may include any disability or matter not limited to those set forth in subsection (d) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

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- (2) Subject to the provisions of paragraph (1) of this subsection the motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmission, or overnight courier delivery.
- (3) Parties may file written responses to the motion within seven working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.
- (4) The commissioner sought to be disqualified shall issue a decision as to whether he or she agrees that recusal or disqualification is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.
- (5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.
- (6) Recusal or disqualification of a commissioner in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.