

City Ethics Commissions and Other Strange Creatures of Lore

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Greetings to all magical travelers,
wizards, mages, magicians, witches,
sorcerers and enchantress'

- ➡ Here, there be Dragons, Unicorns, Magical Committees, Horrific Inquisitions, and Other Beasts of the Unnatural
- ➡ So you wish to learn their secrets?




BEHOLD!

Meet Harrietta Higglebreath

City Attorney in Strange
Days, Texas





She has Battled City Council's, WatchDog Groups and the PACs

- ➡ But her most important lesson was to comprehend ...
- ➡ Ethics Commissions and Special Boards of the City



What we are NOT going to talk about

- ➡ State ethics laws include
 - ➡ ☐ Disclosure statement
 - ➡ ☐ Conflict of interest
 - ➡ ☐ Self-dealing
 - ➡ ☐ Nepotism



Reference


- **TML - Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors . Updated Nov. 2017.**
- Key Legal Requirements for Texas City Officials

Mythical Art of
Bringing Your Own
Creature to Life!





3 Rules of Alchemy

- It does not follow many rules of nature (i.e. state statutes)
 - You make the rules – so think them through
 - Realize, it will eventually get away from you (i.e. it does have a mind of its own)
- 



Ethics Commission – Most Common Experiment in Tampering with Unnatural Forces





- Commissions have only as much or as little power as the city imbues.
- The city can create the Ethics Code
- City creates more than one Commission
- Starts out looking like this
- Ends up looking like this

Why the Transformation?

- Because of Abusive Complainants
- Use for Political or Vindictive purposes
- Use the Lack of Procedures to His Advantage





Abusive Consequences

- Detrimental impact on employees
- Detrimental impact on ability to attract talent to the employment position or office
- Detrimental impact on City operations
- Detrimental impact on public perceptions



Harrietta Must Evaluate High Lord Filer's Complaint

- Mayor Smiles Violated Ethics Code Because He Recused Himself Due to “avoiding the appearance of impropriety”
- Mayor Smiles Violated the entire Ethics Code by Not Resigning
- Mayor Smiles Admitted to Having Self-Dealings with City Contractor



City makes the rules – Make Good Ones! Key Rules:

- Independent evaluation and criteria for a complain (i.e. Intake)
- Must cite the specific rule with specific facts
- Laymen excuse:



Response to Laymen Excuse

- ➡ Ethics complaints must be taken seriously
- ➡ The council can request no less of the complainant
- ➡ No hiding behind lack of knowledge or legal expertise
- ➡ But City must develop easy forms and procedures



Adopt Procedures (don't wait for Commission)

- Identify clear standards for officials (consider separate for elected vs appointed)
- Clear on how to file a complaint (forms are recommended)
- Intake for Compliance
- Automatic Disqualification and Replacement of City Attorney



Further Procedures

- Ability to Request Ethics Opinion
- Safe Harbor
- Powers of Commission Clearly Defined
 - Elected vs Appointed vs Employee
 - Remedial Powers
- Incorporate Charter or City Manager v City Administrator or Boards
- Anticipate Member on Member Complaints



Rules of Investigation

- ➡ Designated Investigator
- ➡ Designated Limitations
- ➡ Designated \$\$\$
- ➡ Confidentiality
- ➡ Reports (fact v legal) (understand conflicts)



Rules for Hearings

- Procedure process so accused knows procedurally what to expect.
 - Deadlines
 - Responses
 - Cooperation
- But allow some discretion of Commission to adapt to circumstances
- Procedural Due Process of both accused and complainant (sometimes commission is only avenue available)



Inquisitorial Style

- Investigator/City Attorney is not Prosecutor
- Complainant brings complaints
- Commission acts by directing investigation
- Commission acts by adjudicating the facts and ethics code
- Not a trial, but not exactly legislative (unless it's a member of the governing body)
- Set out concept at beginning



Ethics Rule 3.08 – Attorney as Witness

- ➡ Separate Factual and Legal Roles (if possible)
- ➡ Resolve you may be a witness
- ➡ Protect Atty/client by clear separation

Rule 3.08

- Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct prohibits a lawyer from serving as an advocate before the court “in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact.” Then (a) lists exceptions.
- (b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client consents after full disclosure.
- (c) Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.



Decisions

- In writing (define who writes it)
- Board is a collective decision and
- Finds of specific violations and imposing specific penalties
- Delivered to complainant and respondent
- Deadlines
- Appeals

Other Creatures

- Compliance Commission
- Citizen Advisory Committee
- Community Committee
- Parks and Recreational Committee





You Still Make the Rules

If the body is not defined by nature (i.e. state law= adopt procedures for committee

Define Powers (avoid board conflicts)

Choose Wisely –
think it through



Thou Hast Cometh
to The End

The Sacred Scrolls

ver. 4

Eighteen ~ Two ~ Eleven

Eighty-Three ~ Two ~ Nineteen

Nine ~ Four ~ Thirty-Eight

Ninety-Four ~ Two ~ One-Hundred & Six

One-Hundred & Four ~ Three ~ Five

Thirteen ~ Two ~ One Hundred & One

Two Hundred & Forty-Five ~ One ~ Sixteen

Fifteen ~ Six ~ One-Hundred & Two

Two Hundred & Sixty-Four ~ Four ~ Twenty-Nine

Twenty-Eight ~ Two ~ Six

Fifty-Seven ~ Two ~ Eighteen

Seventy-One ~ Two ~ Nine

One Hundred & One ~ One ~ Thirty-Four

Sixteen ~ Two ~ Two