



THE TEXAS MUNICIPAL LAWYER™

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PREPARATION FOR F-5 HEARINGS

When a city terminates the employment of a police officer, the Texas Commission on Law Enforcement Officer Standards & Education (“TCLEOSE”) requires that the officer’s direct supervisor indicate why that police officer was fired. The supervisor must indicate on a Separation of Licensee (F-5) Form (“F-5 Form”) the reason for the termination. The form provides three options: (1) Honorably Discharged; (2) General Discharge; and (3) Dishonorably Discharged. If the supervisor selects either General Discharge or Dishonorably Discharged, the city should anticipate that the officer will file with TCLEOSE a Petition to Correct the Separation of Licensee Form (“Petition”). If the city is unwilling to change its designation on the form once the Petition is filed, TCLEOSE will then refer the matter to the State Office of Administrative Hearings (“SOAH”) for a hearing on the matter. In order to prevail at the SOAH hearing, the city should do the following:

- **Contact your city attorney:** Ideally, the city has consulted the city attorney prior to terminating an employee. If the city did not first consult the city attorney at that time, it should

do so prior to filling out the F-5 form;

- **Document, document, document:** The officer’s personnel file should include all performance problems documented with the date of each problem. Each document should be signed by a supervisor and the police officer to acknowledge the documentation; and
- **Adhere to policy:** If the city’s personnel manual or the police department’s operations manual calls for a particular procedure to be followed before terminating the employment of an officer, do not deviate from those standards. Make sure all evaluations are given as described by city policy.

Issuance of the F-5: Do not issue the F-5 form until all internal appeals (or the deadlines for appeals) have been exhausted. The city must submit the F-5 form to TCLEOSE no later than 7 days

after: (1) separation of employment; **OR** (2) internal appeals are exhausted.

Be consistent: If the city is considering taking adverse employment action due to poor performance by the police officer, do not take action that contradicts the police officer’s performance. For example, if a police officer is on probation, the city should refrain from offering that police officer any kind of promotion or employee benefit that appears to be a
(F-5 Hearings cont’d)

UPCOMING EDUCATIONAL OPPORTUNITIES

July 20, 2012

Newly Elected Officials Workshop at HOTCOG

Alan presents his state certified Open Government Course (required of newly elected officials in first 90 days of office)

October 21 - 24, 2012

International Municipal Lawyers Association Annual Conference in Austin

Alan serves as State Chair for Texas. The firm is a sponsor.

Have any *City Hall Hearsay* to share? Your quote may appear in our anecdotal column of humorous comments made at public meetings! Email your quotes to:
texasmunicipallawyers@gmail.com

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(F-5 Hearings cont'd)

result of good performance. This may confuse the SOAH Administrative Law Judge and cause the judge to interpret this as negating the prior documented performance problems.

CLIENT NEWS

Bruceville-Eddy I-35 Ground Breaking Ceremony: June 14th



Sallie Burchett (l) & Jill Hoffman (r)

Sallie and Jill attended the ground breaking ceremony in Bruceville-Eddy for that segment of the Interstate 35 project on June 14, 2012. The firm appreciates the opportunity it has been provided to help its clients plan for the disruptions and future opportunities provided by this major public works project.

INTEGRITY AT CITY HALL

Q: Who must file an affidavit disclosing interest in property that a municipality is planning to purchase?

A: Before a municipality acquires any real or personal property in which a *public servant* has an interest, that *public servant* must file an affidavit with the county clerk where the property is located disclosing his or her interest in the property, as required by GC §553.002, within 10 days prior to the acquisition.

GC §553.001(2) defines *public servant* as a person elected, selected, appointed, employed, or otherwise designated as an officer of government, or a candidate for nomination or election to public office. This affidavit filing requirement applies even if a person has not yet qualified for office or assumed the duties of office for the municipality. Further, this affidavit filing requirement applies to the purchase of both real and personal property, whether the acquisition is by purchase or by condemnation, using public funds.

ABOUT THE FIRM

- The firm is proud of Associate **Elaine Hengen**, recipient of the **2012 Galen Sparks Award for Outstanding Public Service by an Assistant City Attorney**. The award was pre-



Sylvia & Elaine

sented to Elaine by El Paso City Attorney Sylvia Borunda Firth, on behalf of the Texas City Attorneys Association, at the annual conference in South Padre Island in June. Way to go Elaine!!

- The firm welcomes former law clerk **Sarah Gardner-Cox** back as an Associate after three years as Deputy City At-

torney for the City of Temple, Texas. Sarah graduated from Texas Tech in 2008 with both a JD and a Masters in Public Administration. In addition to her other professional accomplishments, Sarah received the **2011 Galen Sparks Award for Outstanding Public Service by an Assistant City Attorney**. Sarah says she is excited to rejoin the team and continue to serve as a legal advisor to municipalities throughout Texas. Welcome back, Sarah!

- Jill presented on Ethics at the **Texas City Attorneys Association Annual Conference** in South Padre in June. The firm was proud to be a sponsor.



HEARSAY...

Recently overheard by firm members at City Hall:

“Do you work for the citizens or for the City?” — *Citizen to Alan (Special Counsel for the City) at an Orange City Council meeting.*



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