



2. The public interest of the citizens of Texas requires disclosure of records relating to unlawful conduct by Mr. Paxton for two reasons. *First*, Mr. Paxton is a lawyer, and on August 5, 2014, Plaintiff Gammill filed a grievance against Mr. Paxton because he violated the Texas Disciplinary Rules of Professional Conduct, including: (1) Disciplinary Rule 8.04(a)(2), which prohibits a Texas lawyer from committing “any . . . criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects”; and (2) Disciplinary Rule 8.04(a)(3), which prohibits a Texas lawyer from engaging in conduct involving “dishonesty, fraud, deceit, or misrepresentation.” Mr. Paxton violated Disciplinary Rule 8.04(a)(2) by admitting to facts that constitute a third degree felony in violation of §29I of the Texas Securities Act. The Texas Securities Commissioner issued a Disciplinary Order against Mr. Paxton on May 2, 2014, and Mr. Paxton acknowledged the factual findings in that Order under oath, including that he acted as an investment-adviser representative without registering with TSSB. Thus, Mr. Paxton admitted to acts that also constitute a violation of the criminal prohibition in § 29I of the Act. That provision prohibits rendering any service as an unregistered investment adviser representative.<sup>2</sup> Mr. Paxton also violated Disciplinary Rule 8.04(a)(3) by taking secret, illegal kickback-commissions for referring his clients and their families to Frederick Mowery and Mowery Capital Management, LLC, and receiving 30 percent of all investment-advisor fees that Mowery charged them. Therefore, the TSSB documents are directly relevant to that disciplinary complaint and the underlying conduct, and that constitutes good cause under § 28 of the Act.

---

<sup>2</sup> Section 29I provides in pertinent part that: “Any person who shall . . . [r]ender services as an investment adviser or an investment adviser representative without being registered as required by this Act shall be deemed guilty of a felony of the third degree.” (Emphasis added.)

3. *Second*, Plaintiffs and all Texas voters deserve to have access to the documents and records that shed light on Mr. Paxton's unethical acts and unlawful conduct. Any person who wants to occupy the high office of Texas Attorney General should exhibit the highest standard of personal and professional integrity. To the extent that Mr. Paxton apparently falls far short of that standard, the voters are entitled to know exactly what he did that forms the basis of the complaint against him. Indeed, if Mr. Paxton favors transparency, honesty, and an informed electorate, he should join in Plaintiffs' request that the TSSB release the documents requested.

#### **DISCOVERY CONTROL PLAN**

4. Plaintiffs intend for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. This case involves complex issues and will require extensive discovery. Therefore, Plaintiffs will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit.

#### **PARTIES**

5. Plaintiff Erica Gammill is an individual residing in Austin, Travis County, Texas. Plaintiff is the Acting Executive Director of the Texas Coalition on Lawyer Accountability, a nonprofit organization under Internal Revenue Code Section 501(c)(3) that is dedicated to educating the public and advocating on behalf of the public interest to hold the Texas legal profession accountable with respect to its statutory, constitutional, and ethical obligations.

6. Plaintiff the Texas Coalition on Lawyer Accountability is a nonprofit organization under Internal Revenue Code Section 501(c)(3) that is dedicated to educating the public and advocating on behalf of the public interest to hold the Texas legal profession accountable with respect to its statutory, constitutional, and ethical obligations.

7. Defendant TSSB is an agency of the State of Texas, a “governmental body” for purposes of the Texas Public Information Act (“TPIA”). Defendant TSSB may be served with process of citation by a process server delivering the citation and this petition on John Morgan, Texas Commissioner of Securities, at 208 East 10th Street, 5th Floor (Rusk Building), Austin, Texas 78701.

8. Defendant Morgan is the Texas Commissioner of Securities. As Commissioner of Securities, Morgan is the chief administrative officer of TSSB and is sued in his capacity as the officer of public information to be ordered by the Court to promptly make available the information requested by Plaintiffs Defendant Morgan can be served with process of citation by a process server delivering the citation and this petition at 208 East 10th Street, 5th Floor (Rusk Building), Austin, Texas 78701.

### **JURISDICTION**

9. This Court has jurisdiction over this cause pursuant to § 552.321 of the TPIA, which allows a requestor of public information to file suit in a district court for a writ of mandamus to compel a governmental body to make information available for public inspection if the governmental body has refused to supply the public information upon request. Jurisdiction also exists under §§ 28A and 28B of the Texas Securities Act, which authorize a court to order the release of certain TSSB documents for “good cause shown.”

### **VENUE**

10. Venue is proper in Travis County, Texas under § 552.321(b) of the TPIA, as TSSB is a state agency with its main office in Travis County.

## FACTS

11. Mr. Paxton is a lawyer licensed to practice in Texas. Teri Goettsche hired Mr. Paxton to represent her and to prepare a post-nuptial agreement between herself and her husband, David Goettsche. During the course of the representation, Mr. Paxton encouraged Ms. Goettsche to hire Frederick Mowery (“Mowery”) and Mowery Capital Management, LLC (“MCM”) to manage her financial investments. Ms. Goettsche subsequently entered into an Investment Advisory Agreement with Mowery and MCM, under which MCM managed the stock, bond, and mutual fund investments of Ms. Goettsche. Approximately a year later, David Goettsche also entered into an Investment Advisory Agreement with MCM and Mowery.

12. At the time that Mr. Paxton solicited Ms. Goettsche to retain Mowery and MCM, he was secretly and illegally acting as a paid investment advisor representative for MCM. Mr. Paxton received a secret kickback-commission from Mowery and MCM amounting to thirty percent (30%) of all of the investment advisor fees that the Goettsches paid. Both Mr. Paxton and Mowery concealed that relationship and fee arrangement from the Goettsches. Under § 12B of the Texas Securities Act, Mr. Paxton was legally required to register with the TSSB before he referred the Goettsches (or anyone else) to MCM.<sup>3</sup> In flagrant disregard and violation of his legal duty, Mr. Paxton has admitted that he failed to register with the TSSB or to make that public disclosure as an investment advisor representative for MCM. By admitting that he failed to register as required by the Texas Securities Act, Mr. Paxton admitted to facts that constitute a third degree felony under § 29I of the Texas Securities Act.<sup>4</sup>

---

<sup>3</sup> Section 12.B provides in pertinent part: “A person may not act or render services as an investment adviser representative for a certain investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided in § 18 or 12-1 of this Act.”

<sup>4</sup> See footnote 2, above.

13. Mr. Paxton shared offices with Mowery, both in Dallas and in Collin County. Mr. Paxton was well aware of Mowery's tenuous financial condition at the time. Yet when Mowery foreseeably went bankrupt thereafter, Mr. Paxton concealed that information from the Goettsches.

14. The Paxton-Mowery scheme severely damaged the Goettsches financially. At Mowery's suggestion, the Goettsches invested approximately \$150,000 in real estate development and heavy construction equipment purchasing ventures with a company operated and owned in part by James H. "Jim" Moore, III. David Goettsche's brother, Steve, and David's friend, Luke Dauwe, also invested large amounts in the Moore ventures. Mowery concealed from the Goettsches that he owned a significant percentage of Moore's company and that Moore owed creditors more than \$33 million and that he went bankrupt. In addition, despite Mowery's assurances that their investment funds were being deposited in a limited liability company (or another business entity with liability protection), Mowery actually invested the Goettsches' funds in general partnerships and joint ventures that he created, thereby exposing the Goettsches to personal liability. As a consequence of Mr. Paxton's and Mowery's misrepresentations and concealment of the truth, David and Teri Goettsche lost over \$150,000, and Steve Goettsche also suffered a major financial loss.

15. On May 2, 2014, Defendant Morgan signed and entered Disciplinary Order No. IC14-CAF-03, in The Matter of The Investment Adviser Representative Registration of Kenneth Warren Paxton, Jr.<sup>5</sup> Mr. Paxton signed a sworn acknowledgement of this Disciplinary Order on April 30, 2014, under which he "knowingly and voluntarily consent[ed] to the entry of the

---

<sup>5</sup> A copy of that Disciplinary Order is attached hereto as Exhibit "A."

foregoing [Disciplinary] Order and the Findings of Fact and Conclusions of Law and Undertaking contained therein . . . .”

16. Pursuant to his sworn acknowledgement, Mr. Paxton admitted to the following facts:

- “MCM is . . . a registered investment adviser.”
- Paxton “solicited potential clients for MCM,” including while “MCM was a state-registered investment adviser . . . .”
- Paxton “was compensated by MCM for each solicitation resulting in a client relationship with MCM.”
- Paxton “successfully solicited . . . clients for MCM at times when MCM was a state-registered investment adviser but [Paxton] was not registered as an investment adviser representative of MCM. These solicitations occurred in 2004, 2005, and 2012.” (Emphasis added.)
- “§ 12.B of the Texas Securities Act . . . prohibits a person from acting as an investment adviser representative for a certain investment adviser in Texas unless the person is registered as an investment adviser representative for that particular investment adviser.” (Emphasis added.)

17. The Conclusions of Law in the Disciplinary Order included the following:

- Paxton “violated § 12.B of the Texas Securities Act by acting as an investment adviser representative for MCM when MCM was registered as an investment adviser with the Securities Commissioner but [when Paxton] was not registered as an investment adviser representative of MCM.” (Emphasis added.)

18. The Disciplinary Order confirms that Mr. Paxton solicited clients for MCM on various occasions from 2004 to 2012. But TSSB records confirm that he was not registered as an

investment adviser representative for MCM until December 18, 2013. Thus, Mr. Paxton has demonstrated a long-standing pattern of unethical and unlawful conduct continuing over several years.

19. On July 18, 2014, Texans for Public Justice, a watchdog group that monitors the influence of money in Texas politics and courts, filed a criminal complaint against Mr. Paxton for failing to register as an investment adviser representative as required by the Texas Securities Act.<sup>6</sup> The complaint asked the Public Integrity Unit of the Travis County District Attorney's office to determine whether Mr. Paxton "committed one or more criminal felony offenses" in violation of the Texas Securities Act. That complaint remains pending.

20. On August 5, 2014, Plaintiff Gammill, as Acting Executive Director of the Texas Coalition on Lawyer Accountability, filed a grievance with the State Bar of Texas against Mr. Paxton for violating the Texas Disciplinary Rules of Disciplinary Conduct in connection with his representation of Ms. Goettsche, and by failing to register as an investment adviser representative as required by the Texas Securities Act.<sup>7</sup> Specifically, the grievance alleged that Mr. Paxton violated several disciplinary rules of the State Bar of Texas, including: (1) Disciplinary Rule 1.06(b)(2) by representing a client when that representation reasonably appeared to be adversely limited by his own financial interests and by his obligations to a third person; (2) Rule 1.08(a), by entering into a business transaction with a client without fully informing the client of the terms of the transaction and obtaining consent; (3) Rule 8.04(a)(2), by committing an unlawful act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects; and (4) Rule 8.04(a)(3), by engaging in conduct involving deceit, dishonesty, fraud, or misrepresentation.

---

<sup>6</sup> A copy of the complaint is attached hereto as Exhibit "B."

<sup>7</sup> A copy of the grievance is attached hereto as Exhibit "C."

21. On August 21, 2014, Plaintiffs filed a request (hereafter, the “Request”) under the TPIA with TSSB via email, seeking the following documents:

1. “Any and all documents created by the TSSB from January 1, 2013 to August 20, 2014, which mention, refer to, or discuss any of the following: Fredrick Mowery or Fritz Mowery;
2. Any and all documents held by the TSSB from January 1, 2013 to August 20, 2014, which mention, refer to, or discuss any of the following: Kenneth Paxton, Jr. (“Paxton”) or Mowery Capital Management, LLC (or its affiliates) (“MCM”);
3. Any and all communication from January 1, 2013 to August 20, 2104 between any of the following parties and the TSSB: Paxton, Fredrick Mowery, Fritz Mowery, or MCM;
4. Any and all documents that Kenneth Paxton, Jr. submitted to TSSB in order to become registered on December 18, 2013 as an investment advisor representative of MCM. That date is referred to in the Disciplinary Order, Order No. IC14-CAF-03, dated May 2, 2014 (hereinafter referred to as the “Disciplinary Order”);
5. Documents that show that, as referred to in the Disciplinary Order (Finding of Fact No. 5), Paxton “successfully solicited three (3) clients for MCM.”
6. Any documents that show that the TSSB has begun or initiated any action against MCM to revoke any license or registration that MCM has obtained from the TSSB.
7. Any documents that show or reflect any communication between the TSSB and any person in the office of the Travis County District Attorney, concerning Paxton, Mowery or MCM.

8. Any documents that show or reflect any communication between the TSSB and any person in or associated with the office of the Speaker of the Texas House of Representatives concerning Paxton, Mowery, or MCM.
9. Any documents that show or reflect any communication between the TSSB and the State Bar of Texas or the Office of Chief Disciplinary Counsel.”<sup>8</sup>

22. On August 22, 2014, the Plaintiffs confirmed with the TSSB by telephone that the documents requested under items 6, 7, 8, and 9 are for the time period of January 1, 2013 to August 20, 2014. In addition, Plaintiffs confirmed that the request in item 9 is for “any communication between the TSSB and the State Bar of Texas or the Office of Chief Disciplinary Counsel” that relates to Kenneth Paxton, Jr. and/or Fredrick “Fritz” Mowery.<sup>9</sup> On August 28, 2014, Defendant TSSB provided the Plaintiffs with approximately 90 electronic documents which were responsive to Plaintiffs’ Request. On September 5, 2014, the Plaintiffs received a cost estimate for additional documents that were responsive to her Request.<sup>10</sup> Also on September 5, 2014, the Plaintiffs received a copy of a letter from Marlene K. Sparkman, General Counsel of TSSB, to the Attorney General of Texas, Greg Abbott.<sup>11</sup> The letter stated that “[o]ther records that are responsive to the request are held by [TSSB], but they are considered to be within exceptions from public disclosure.” Specifically, the TSSB letter claimed that the records should be withheld from public disclosure pursuant to the following exceptions to the TPIA: (1) § 552.101, which exempts records that are “confidential by statute,” in conjunction with Texas Securities Act § 28A, which provides confidentiality for information received or

---

<sup>8</sup> The Request is attached hereto and incorporated herein as Exhibit “D.”

<sup>9</sup> A copy of an email from the TSSB confirming these clarifications is attached hereto and incorporated herein as Exhibit “E.”

<sup>10</sup> A copy of the cost estimate is attached hereto and incorporated herein as Exhibit “F.”

<sup>11</sup> A copy of this letter is attached hereto and incorporated herein as Exhibit “G.”

made by the TSSB during the course of an investigation; (2) § 552.101, which exempts records that are “confidential by statute,” in conjunction with Texas Securities Act § 28.B, which designates as confidential certain registration-related materials; (3) § 552.101, which exempts records that are “confidential by statute,” in conjunction with Texas Securities Act § 13-1, which designates as confidential certain inspection-related materials; (4) § 552.108, the “law enforcement” exception; (5) § 552.147, which exempts Social Security numbers; (6) § 552.136, which exempts credit card numbers; and (7) § 552.137, which exempts email addresses. The TSSB then requested a “public information opinion” from the Attorney General regarding whether these records may properly be withheld from public disclosure as the TSSB has claimed.

23. As of the date of the filing of this Petition, the Texas Attorney General’s Office has not responded to the TSSB’s request for a “public information” opinion.

#### **CAUSES OF ACTION**

24. Sections 28A and 28B of the Act authorize the Court to order the release of the documents requested by Plaintiffs for “good cause shown,” if, as § 28B provides, “[t]he disclosure does not violate any other provision of this Act or Chapter 552, Government Code.” Good cause clearly exists in this case because of the need of Texas voters and the public to obtain evidence relevant to the disciplinary complaint that Plaintiffs have filed against Mr. Paxton. As set forth above, the TSSB documents are directly relevant to Mr. Paxton’s violations of the Texas Disciplinary Rules of Professional Conduct, including Disciplinary Rules 1.06, 1.08, 8.04(a)(2), and 8.04(a)(3). Enforcing the Disciplinary Rules is unquestionably in the public interest. The Disciplinary Rules themselves have the force and effect of law and express

Texas public policy.<sup>12</sup> And as paragraph 8 of the Preamble to the Disciplinary Rules states:

The legal profession has a responsibility to assure that its regulation is undertaken in the public interest . . . and to insist that every lawyer both comply with its minimum disciplinary standards and aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

25. A second compelling basis of good cause for disclosure of the requested documents is that Mr. Paxton is the current Republican Party candidate for election as the Attorney General of the State of Texas. If elected to the office of Attorney General, Mr. Paxton would be charged with enforcing and defending the Constitution and laws of the State of Texas. Texas voters are entitled to know, and to be fully informed about, all relevant facts and information regarding Mr. Paxton's background and his ability and intention to uphold the laws of Texas. These requests for documents concern important public issues, and the receipt and public disclosure of this information is vital in order to have an informed electorate. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 14 (1976) ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution"); *Osterberg v. Peca*, 12 S.W.3d 31, 55 (Tex. 2000) (quoting *Buckley* for same purpose). Mr. Paxton has admitted under oath to facts that constitute a third-degree felony under the Texas Securities Act.<sup>13</sup> The purpose of the Texas Securities Act is to "protect

---

<sup>12</sup> *See, e.g., Counsel Financial Servs., LLC v. Leibowitz*, 2013 WL 3895331 (Tex. App.—Corpus Christi 2013, pet. filed) (stating that courts may "deem the disciplinary rules to be an expression of public policy"); *Shields v. Texas Scottish Rite Hosp. for Crippled Children*, 11 S.W.3d 457 (Tex. App.—Eastland 2000, pet. denied) (stating that the rules are "quasi-statutory" and "evidence the public policy of this State"); *Whiteside v. Griffis & Griffis, P.C.*, 902 S.W.2d 739 (Tex. App.—Austin 1995, no writ) (stating that "[t]he disciplinary rules are quasi-statutory").

<sup>13</sup> *See* Exhibit "A," Disciplinary Order.

investors.”<sup>14</sup> As a result of Mr. Paxton’s misrepresentations and illegal actions as an unregistered investment advisor representative, Mr. Paxton has already caused severe financial damage to at least four Texas investors – the Goettsches (Teri, David, and David’s brother, Steve) and Mr. Dauwe (David’s friend). By failing to provide the public with crucial information regarding Mr. Paxton’s violations of the Texas Securities Act, the TSSB and Commissioner Morgan would be failing their statutory duty to “protect investors” in Texas. Without the information responsive to Plaintiffs’ requests, Texas voters would not be able to evaluate fully whether or not Mr. Paxton abides by the legal and ethical standards demanded of Texas lawyers, or to assess and judge his ability to represent with honesty and integrity the State of Texas as its highest-ranking legal officer.

26. Accordingly, because “good cause” exists on multiple grounds for the Court to order that the TSSB disclose the requested documents, Plaintiffs ask the Court to issue an order and a writ of mandamus requiring the TSSB to “promptly” provide copies of those documents and records to Plaintiffs, in accordance with the Act and the TPIA.

### **PRAYER**

27. Plaintiffs pray that this Court set this matter for immediate hearing, and that upon such hearing, that the Court issue an order and a writ of mandamus requiring Defendants to provide to Plaintiffs copies of all documents responsive to Plaintiffs’ Requests, and that the Court grant such other relief to which Plaintiffs may show themselves justly is entitled, at law and in equity.

---

<sup>14</sup> Section 10-1B of the Act provides that: “This Act may be construed and implemented to effectuate its general purposes to protect investors and consistent with that purpose, to encourage capital formation, job formation, and free and competitive securities markets and to minimize regulatory burdens on issuers and persons subject to this Act, especially small businesses.”) (Emphasis added).

