

TEXAS ETHICS COMMISSION

IN THE MATTER OF

WARREN M. YARBROUGH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-220215

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220215 filed against Warren M. Yarbrough, Respondent. The commission met again on July 12, 2002, to consider Sworn Complaint SC-220215. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 254.064, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, an opposed candidate for justice of the peace, failed to file a 30-day before election campaign finance report.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was an opposed candidate for justice of the peace in Collin County. The respondent is the incumbent justice of the peace.
2. The respondent admits that he failed to file the 30-day before election campaign finance report and states that this was his first contested race.
3. The respondent filed a combined 30-day and 8-day before the election report on March 15, 2002, after he received notice of this sworn complaint. The only activity that should have been disclosed on his 30-day before election report was an expenditure of \$558.36 made from personal funds for campaign products.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. An opposed candidate is required to file a report not later than the 30th day before the election. Section 254.064(b), Election Code.
2. For the March 12, 2002, primary election, the 30-day before election report was due by February 11, 2002. The respondent filed his report with the local filing authority on March 15, 2002.
3. The respondent admits to the violation, and the evidence also shows that the report was late. Therefore, there is credible evidence that the respondent violated Section 254.064, Election Code.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that an opposed candidate who has not selected modified reporting must file 30-day before election reports. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 3, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is not technical nor *de minimis*. Accordingly, this ORDER and AGREED

RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a civil penalty of \$100 for the violation described under Section IV, Paragraph 3.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-220215;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 9, 2002; and
4. that the executive director shall promptly refer SC-220215 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-220215 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20____.

Warren M. Yarbrough, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director