

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL A. MCDOUGAL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2712235

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaint SC-2712235. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly file semiannual campaign finance reports. The complaint also alleges that the respondent failed to properly report political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is the district attorney for Montgomery County, Texas.
2. The complaint was filed on December 14, 2007.
3. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5. Failing to timely file or filing incomplete campaign finance reports is a Class C misdemeanor. The statute of limitations for misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Therefore, the commission does not have jurisdiction to consider the allegations of reporting violations that occurred before December 14, 2005, and those allegations were not considered.

4. On January 5, 2004, the respondent filed a campaign treasurer appointment. Since filing his campaign treasurer appointment on January 5, 2004, the respondent has not designated any report as a final report. The respondent filed semiannual and pre-election campaign finance reports between January and July 2004. After July 2004, the respondent did not file a campaign finance report until July 2007.
5. On the respondent's semiannual report filed July 16, 2007, the respondent left blank the space to disclose the total political contributions maintained. The respondent also failed to include the full addresses of six persons to whom political expenditures were made. The respondent disclosed four political contributions totaling \$3,100 on Schedule A (used for itemizing political contributions), and disclosed \$3,100 as the amount of total political contributions on the report's cover page. The respondent disclosed 12 political expenditures totaling approximately \$10,300 on Schedule F (used for itemizing political expenditures) and Schedule G (used for itemizing political expenditures made from personal funds), but only entered \$3,936.81 as the amount of total political expenditures on the report's cover page.
6. The respondent submitted a sworn response in which he acknowledges that he did not file January 2006, July 2006, and January 2007 semiannual reports. The evidence indicates that the respondent did not accept political contributions or make political expenditures during those reporting periods. The respondent also swears he did not believe he was required to file these reports if he "[did] not exceed \$500 in contributions or expenditures during the reporting period."
7. On January 22, 2008, the respondent filed his January 2006, July 2006, January 2007, and corrected July 2007 semiannual reports. For the January 2006, July 2006, and January 2007 semiannual reports, the respondent disclosed no activity during each reporting period and zero contributions maintained as of the last day of each reporting period. The respondent filed correction affidavits with the late-filed reports stating that he did not believe these reports were due since he had no activity during the reporting periods. As to the July 2007 corrected report, the respondent indicated in his correction affidavit that he failed to report the total political contributions maintained as of the last day of the reporting period, incorrectly reported his total political expenditures during the reporting period, and failed to list the addresses of six persons to whom expenditures were made. On the July 2007 corrected report, the respondent listed \$10,305.81 as the total amount of political expenditures and included the six addresses that were previously left out. The respondent disclosed zero contributions maintained as of the last day of the reporting period.

IV. Findings and Conclusions of Law

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

Failure to File Semiannual Campaign Finance Reports

1. A candidate shall file two reports for each year, the first report shall be filed not later than July 15, and cover the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30; the second report shall be filed not later than January 15, and cover the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
2. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. ELEC. CODE § 254.065.
3. The respondent filed a campaign treasurer appointment in January 2004. Therefore, the respondent was required to file semiannual reports as a candidate. The respondent never terminated his campaign treasurer appointment, thus, he never terminated the requirement to file semiannual reports as a candidate. If a local candidate is elected to office and terminates his campaign treasurer appointment, he must file semiannual campaign finance reports as an officeholder unless he does not exceed \$500 in officeholder contributions or officeholder expenditures. ELEC. CODE § 254.095. The January 2006, July 2006, and January 2007 semiannual reports at issue were under the \$500 threshold for officeholder semiannual reports, but the respondent was required to file them because he had not terminated his campaign treasurer appointment as a candidate.
4. On January 22, 2008, in response to the sworn complaint, the respondent filed semiannual reports for January 2006, July 2006, and January 2007. The contributions and expenditures on each of these semiannual campaign finance reports were zero. Although the respondent filed the semiannual reports at issue after receiving notice of the complaint, he failed to timely file the reports at issue. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Failure to Timely File the July 2007 Semiannual Campaign Finance Report

5. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21.
6. Because the deadline for filing the July 2007 semiannual report fell on Sunday, July 15, 2007, the report was due on the next regular business day (Monday, July 16, 2007). The respondent filed his July 2007 semiannual report on July 16, 2007. Therefore, as to the July 2007 semiannual report, there is credible evidence of no violation of section 254.063 of the Election Code.

Failure to Properly Report Total Political Contributions and Total Political Expenditures on the July 2007 Semiannual Campaign Finance Report

7. Each campaign finance report is required to include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
8. On his July 2007 semiannual report, the respondent disclosed four political contributions totaling \$3,100 and entered that amount on the report's cover sheet. The respondent's political expenditures totaled approximately \$10,300, but he only entered \$3,936.81 as the amount of total political expenditures on the report's cover sheet. Therefore, as to total political contributions, there is credible evidence of no violation of section 254.031 of the Election Code. There is credible evidence of a violation of section 254.031(a)(6) of the Election Code, with respect to total political expenditures.

Failure to Include Required Information on the July 2007 Semiannual Campaign Finance Report

9. Each campaign finance report is required to include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
10. Each campaign finance report filed by a candidate must include, as of the last day of the reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
11. On his original July 2007 semiannual report, the respondent failed to include the full addresses of six persons to whom expenditures were made. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
12. On his original July 2007 semiannual report, the respondent did not disclose the total amount of political contributions maintained as of the last day of the reporting period. The respondent left the space to disclose that information blank. On the corrected July 2007 semiannual report the respondent disclosed the amount as zero. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(8) of the 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a candidate shall file two reports for each year, the first report shall be filed not later than July 15, and the second report shall be filed not later than January 15. The respondent acknowledges that each campaign finance report is required to include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent acknowledges each campaign finance report is required to include the full address of any payee to whom the filer made expenditures the aggregate of which was more than \$50 during the reporting period. The respondent acknowledges that each campaign finance report is required to include the total amount of political contributions maintained as of the last day of the reporting period. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2712235.

AGREED to by the respondent on this _____ day of _____, 2008.

Michael A. McDougal, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director