

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MAXINE LONGORIA-NASH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-280129 AND SC-280253

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaints SC-280129 and SC-280253. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.006(b) of the Election Code, a law administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaints allege that the respondent represented in campaign communications that she held an elective public office that she did not hold at the time the representations were made.

III. Facts Supported by Credible Evidence

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

1. The respondent served as judge of the Hidalgo County Juvenile Justice Court from September 1999 until November 30, 2007. The respondent was an unsuccessful candidate for judge of the 449th District Court (Hidalgo County) in the 2008 primary election.
2. Sworn complaints SC-280129 and SC-280253 allege that the respondent represented in campaign communications that she held a judicial office that she did not hold at the time the representations were made. In support of the allegations, both complaints include an approximately 7" x 9" brochure ("push card") that was published and distributed by the respondent.
3. The push card at issue includes the heading "Welcome to the Court of Judge Maxine Longoria-Nash . . ." and refers several times to the respondent as "Judge Maxine Longoria-Nash." Both sides of the push card include the text "Judge Maxine Longoria-Nash For the 449th District Court." The part of the push card that lists the respondent's experience states

that the respondent served as “Associate Judge, Hidalgo County Juvenile Justice Court since 1999.”

4. SC-280129 alleges that numerous pieces of campaign literature describing the respondent as “judge” have been distributed since December 1, 2007. The complaint states that the materials are identified as political advertising paid for by the “Maxine Longoria-Nash Campaign.” The complaint states that the complainant received the push card at issue at Hidalgo County Democratic Headquarters in January 2008.
5. SC-280253 refers to an e-mail that was sent by an individual in January 2008, urging voters to support the respondent’s campaign for judge of the 449th District Court. The e-mail states that the respondent previously served as judge of the Juvenile Justice Court. The e-mail states, “The juvenile court was made into the new 449th District Court . . . Maxine is now running for the Democratic nomination to run against the newly appointed judge in November to get her seat back in the Court.” The e-mail does not address the respondent with the title “judge.” The aforementioned push card was sent as an attachment to the e-mail.
6. In response to the sworn complaints, the respondent submitted two sworn statements, in which she denies the allegations. The respondent asserts that she has not made any representation in campaign communications that indicate she held an elective public office. The respondent asserts that the materials at issue were printed during the time she served as judge of the Hidalgo County Juvenile Justice Court. The respondent further asserts that she never represented that she held the position of judge of the 449th District Court. The respondent swears that she paid strict attention to section 255.006(c)(2) of the Election Code, and included the word “for” to clarify that she did not hold the office sought. The respondent asserts that the push card at issue makes specific reference to her serving as an associate judge in the Hidalgo County Juvenile Justice Court and not as judge of the 449th District Court. The respondent swears that all campaign materials ordered after she no longer served as judge of the Juvenile Justice Court no longer contained the word “Judge.” The respondent also swears that the push cards were changed to state the specific time period that she served as judge of the Juvenile Justice Court.
7. The respondent included with her sworn statements a copy of two invoices for bumper stickers and push cards. The invoice for bumper stickers is dated November 12, 2007, and the invoice for push cards is dated November 15, 2007. The respondent also included several e-mails to a marketing company from November 2007 authorizing the printing of push cards and bumper stickers.
8. Records of the commission show another individual was appointed as the 449th District Court Judge on November 21, 2007.

9. The respondent swears that she is not responsible for the e-mail at issue. The respondent swears that she did not direct the individual to send the e-mail or provide advice as to its content. The respondent also swears that the e-mail in question was not sent by anyone employed by her campaign.
10. The respondent was requested to provide an affidavit addressing when the materials at issue were distributed. The respondent has not provided the requested information.

IV. Findings and Conclusions of Law

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

1. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b).
2. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word “for” in the communication in a type size that is at least one-half the type size used for the name of the office. ELEC. CODE § 255.006(c).
3. “Campaign communication” means, in pertinent part, a written or oral communication relating to a campaign for nomination or election to public office. *Id.* § 251.001(17).
4. As a general rule, it would not be a violation of section 255.006 of the Election Code for a person who is currently a judge to use the title “judge” in campaign communications. Ethics Advisory Opinion No. 171 (1993). However, it would be a violation of section 255.006(b) of the Election Code for a judge to represent in a campaign communication that she holds a judicial office other than the one she actually holds. *Id.* It would be a violation of section 255.006(b) of the Election Code for a former judge to represent in a campaign communication that she currently holds a judicial office. *Id.*
5. The push card at issue is a campaign communication because it is a written communication relating to a campaign for election to public office. The push card repeatedly identifies the respondent as “Judge Maxine Longoria-Nash.” The evidence indicates that the respondent distributed campaign materials that identified her with the title “judge” after she no longer held a judicial office. Although the respondent swears the campaign materials at issue were printed while she still held the office of judge of the Hidalgo County Juvenile Justice Court, the evidence indicates the push cards were distributed after November 30, 2007, when the respondent no longer held a judicial office.

6. In addition, notwithstanding the respondent's use of the word "for," it is staff consensus that the push card, when read as a whole, indicates that the respondent held the position of judge of the 449th District Court. That court had only recently been created and no one, including the respondent, had ever held that position. The position was open until an appointment was made by the Governor on November 21, 2007. Even though the respondent argues that she held the position of judge at the time the push cards were printed, she did not hold the position of judge of the 449th District Court, which is what the push cards represent. Therefore, as to the push card at issue, there is credible evidence that the respondent violated section 255.006(b) of the Election Code.
7. As to the allegation in sworn complaint SC-280129 relating to bumper stickers, although there is some evidence as to what the bumper stickers stated, the complainant did not provide a copy of the bumper sticker. Therefore, there is insufficient evidence that the bumper stickers represented that the respondent held a public office that she did not hold at the time the representation was made. Therefore, as to the bumper stickers, there is insufficient evidence that the respondent violated section 255.006(b) of the Election Code.
8. As to the allegation in sworn complaint SC-280253 relating to the e-mail at issue, the respondent denies responsibility for the e-mail. There is no evidence to indicate that the respondent sent the e-mail or that the respondent was involved in writing the e-mail. Further, the e-mail did not represent that the respondent held a public office that she did not hold at the time the representation was made. The e-mail does not address the respondent with the title "judge." The e-mail states that the respondent previously served as a juvenile court judge and is now running against the recently appointed judge of the new 449th District Court. Therefore, as to the e-mail at issue, there is credible evidence that the respondent did not violate section 255.006(b) 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 these sworn complaints.
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 person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, 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-280129 and SC-280253.

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

Maxine Longoria-Nash, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director