

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES A. ROSENTHAL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2808302

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2808302. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.063 of the Election Code and section 18.7 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent failed to timely file a July 2008 semiannual report.

III. Facts Supported by Credible Evidence

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

1. The respondent was the district attorney for Harris County until February 15, 2008.
2. The complaint alleged that the respondent failed to file a July 2008 semiannual report by the reporting deadline.
3. The respondent filed his July 2008 semiannual report with the local filing authority on July 22, 2008. The report disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$1,324.75 in total political expenditures (corrected to \$324.75)
 - \$126,889.35 in total political contributions maintained as of the last day of the reporting period
 - A blank field for outstanding loans

4. The respondent filed one correction to the report at issue but did not include a correction affidavit.
5. In response to the allegation, the respondent swore:

There can be no doubt that *if* I was required to file a Form C/OH on July 15, 2008, I did not file said report until July 22, 2008. There can also be no doubt that money was paid from my campaign fund after my January filing and before July 15, 2008. Mr. Blackburn's allegations are substantially correct except that I withdrew my name from office candidacy in January of 2008. Therefore, on July 15, 2008, I was neither an office holder nor candidate under the provisions of section 251.002 Texas Election Code.
6. The respondent also submitted an affidavit swearing that he originally filed his campaign treasurer appointment in October or November 1999 and the same individual remained his campaign treasurer at the time relevant to this sworn complaint. The respondent had not terminated his campaign treasurer appointment.
7. The respondent's July 2008 semiannual report disclosed two political expenditures totaling approximately \$10,325 on Schedule F (used for reporting political expenditures made from political contributions).
8. The report at issue also disclosed eight expenditures on Schedule I (used for reporting non-political expenditures), six of which, totaling \$46,565, include the following purpose descriptions: "legal fees," "medical consultant," "legal fees," "medical consultant," "consultant," and "late fee." Another \$18,900 expenditure on Schedule I to "Lloyd Kelley, c/o Federal Court, 505 Rusk, Houston, Tx 77002" disclosed a blank field for the purpose description.
9. On July 23, 2008, the respondent corrected the report at issue to move a \$10,000 political expenditure to "Kelly Siegler Campaign Fund" for "campaign contribution" from Schedule F to Schedule I. The correction disclosed the purpose of the \$18,900 expenditure to Lloyd Kelley as "assessed fees."
10. On October 8, 2008, staff spoke with the respondent by telephone and informed the respondent that he should correct the report to accurately disclose the political expenditures. To date, the respondent has not filed any additional corrections to the report at issue.

IV. Findings and Conclusions of Law

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

1. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include the filing of a campaign treasurer appointment. ELEC. CODE § 251.001(1)(a).
2. A candidate shall file two reports for each year. The first report shall be filed not later than July 15. The report covers 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers 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.
3. Each campaign finance report must 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).
4. Each campaign finance report must 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).
5. A report is timely if it is complete and is filed by the applicable deadline using the reporting method required by law. A report is late if it is incomplete; not filed by the applicable deadline; or not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods. Ethics Commission Rules § 18.7.
6. The July 2008 semiannual report disclosed at least \$46,565 on Schedule I as non-political expenditures. In addition, the respondent corrected the report on July 23, 2008, to move a \$10,000 expenditure, which was originally disclosed as a political expenditure, from the political expenditures schedule to the non-political expenditures schedule and to subtract from the total political expenditures disclosed on the totals page.
7. Based on the purpose descriptions disclosed in the report, the expenditures appeared to be political expenditures that should have been disclosed on Schedule F.
8. Schedule I expenditures are not required to be disclosed in the political expenditures totals on a report’s cover page. Thus, the respondent’s original and corrected July 2008 semiannual report did not accurately disclose the respondent’s total political expenditures.

9. On October 8, 2008, staff notified the respondent regarding the improperly reported political expenditures on the July 2008 semiannual report. The respondent failed to file a correction to the report at issue.
10. The respondent filed his campaign treasurer appointment in 1999 and the campaign treasurer appointment has not been terminated. Thus, the respondent was a candidate with an active campaign treasurer on file and was required to file the July 2008 semiannual report due on July 15, 2008.
11. The respondent did not file his July 2008 semiannual report until July 22, 2008. The report is incomplete because it does not include total political expenditures and does not disclose political expenditures on Schedule F. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code and section 18.7 of the Ethics Commission Rules.

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 respondent also acknowledges that the first report shall be filed not later than July 15. The respondent acknowledges the report covers 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, as applicable, and continuing through June 30. The respondent also acknowledges that each campaign finance report must 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. The respondent further acknowledges that each campaign finance report must 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 that a report is timely if it is complete and is filed by the applicable deadline using the reporting method required by law. The respondent also acknowledges that a report is late if it is incomplete and not filed by the applicable deadline. The respondent agrees to comply with these requirements 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 \$1,000 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-2808302.

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

Charles A. Rosenthal, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director