

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HIRAM MCBETH, III,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100245

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-3100245. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.061, 254.063, and 254.064 of the Election Code, 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. Allegations

The complaint alleged that the respondent failed to include required information in his campaign treasurer appointment, failed to timely file campaign finance reports, and failed to disclose political expenditures in a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was a candidate for judge of the 363rd Judicial District in Dallas County in a primary election held on March 2, 2010.

Disclosure of Office Sought

2. The complaint alleged that the respondent failed to disclose the office sought in his January 2010 semiannual report. The report at issue was filed on January 6, 2010, and disclosed that the respondent was a candidate for "Dallas County Crim. Dist. Ct. #4" and that the report was filed for the primary election held on March 4, 2008. The report disclosed no activity.

3. The complaint alleged that the respondent was a candidate for judge of the 363rd District Court no later than September 7, 2009, because he distributed campaign literature that identified him as a candidate for the district court office. The complaint included a copy of a business card and a flyer that displayed the respondent's photo and Internet address and stated that the respondent was a candidate for "Dallas County Criminal District Court No. 363."

4. In response, the respondent swore:

Response: Deny. Clerical error discovered and correction affidavit filed 2 February 2010. Inadvertent error followed by correction.

5. On February 3, 2010, before the complaint was filed, the respondent filed a correction to the January 2010 semiannual report, in which he corrected the office sought in the report to "Criminal District Court #363" and corrected the election date to March 2, 2010. In the correction affidavit filed with the report, the respondent swore:

Question #14, cover sheet pg. 1, office sought. Dallas County Criminal District Court #363 is the office sought.

Criminal District Court #4 was entered in error.

This correction is submitted. A copy of the incorrectly filed page is attached.

6. In the correction affidavit, the respondent also swore that he filed the corrected report not later than the 14th business day after the date he learned that the report as originally filed was inaccurate or incomplete and that any error or omission in the report as originally filed was made in good faith. The correction also appeared to have been filed with, and stamped as received by, the Elections Department of Dallas County on February 2, 2010.

7. At the time the report at issue was filed, the respondent had a campaign treasurer appointment in effect that stated that he was a candidate for "Judge, Dallas County Criminal District Court #4." The appointment was filed on September 26, 2007.

Timely Filing of Campaign Finance Reports

8. The complaint alleged that the respondent failed to timely file his January 2010 semiannual report and the 30-day pre-election report in connection with the March 2, 2010, primary.

9. In response, the respondent swore:

Response: Deny. Finance reports dated not later than required date and file[d] with the Dallas County Elections Commission and Texas Ethics Commission via affidavit for candidate or officeholder: electronic filing exemption filed electronically on same date.

10. The respondent's January 2010 semiannual report was originally filed on January 6, 2010, and was corrected on February 3, 2010, prior to the sworn complaint being filed, to change the office sought. Both the original report and the corrected report disclosed that no political contributions or political expenditures were made.
11. On February 2, 2010, the respondent filed with the commission a 30-day pre-election report for the March 2, 2010, primary election. The report disclosed that he was a candidate for "Criminal District Court #363" and disclosed \$250 in total political contributions and \$2,683.06 in total political expenditures. The report also appeared to have been filed with, and stamped as received by, the Elections Department of Dallas County on February 1, 2010. The report was due on February 1, 2010.

Disclosure of Political Expenditures

12. The complaint alleged that the respondent failed to disclose political expenditures made in connection with the business cards and brochures "no later than September 7, 2009." The complaint also alleged that the respondent failed to disclose a political expenditure in the form of a filing fee submitted with his application for a position on the ballot in the March 2, 2010, primary election. The complaint included a document that indicated it was from the Dallas County Democratic Party and was titled "receipt of filing documents." The receipt states that the party received a ballot application, \$2,500 filing fee, and 75 pages containing 635 signatures from the respondent as a candidate for "Judge, Criminal Judicial District Court #363" on January 2, 2010.
13. In response, the respondent swore:
- Deny. All entries are true and correct as of date made and notarized and filed for candidate, 363rd District Court, Dallas County.
14. The respondent did not disclose any activity in his July 2010 semiannual report. The January 2010 semiannual report that the respondent originally filed on January 6, 2010, and the correction filed on February 3, 2010, did not disclose any activity. However, the respondent also filed a report on January 20, 2010, that indicated it was the January 2010 semiannual report and disclosed \$1,625 in political expenditures without any itemized schedules of expenditures. The respondent submitted a letter to the commission on February 5, 2010, that

stated, "Please disregard the subject report, filed and date-stamped 28 January 2010. Said filing was submitted in error."

15. The respondent filed a 30-day pre-election report on February 2, 2010, that disclosed \$250 in political contributions with no itemized contributions and \$2,683.06 in political expenditures. The report stated that it covered the period from January 1, 2010, to January 21, 2010. The itemized expenditures included the following:
 - \$460.06 to "Studio 2" for "graphics" on January 5
 - \$350 to "Studio 2" for "graphics" on January 27, 2010
 - \$350 to "Dallas Gospel Connection" for "graphics" on January 21, 2010
 - \$606 to "Studio 2" for "graphics" on January 31, 2010
 - \$375 to "Dallas Examiner" for "advertisement" on January 28, 2009
 - \$542 to "Elite News" for an undisclosed purpose on January 28, 2009
16. The respondent filed an 8-day pre-election report on February 22, 2010, that disclosed \$450 in political contributions with no itemized contributions and \$5,437.44 in political expenditures. The report stated that it covered the period from January 31, 2010, to February 22, 2010. The itemized expenditures included the following:
 - \$310 to "Studio-Two Creative" for "Advertisement" on January 5, 2010 (should have been included on 30-day pre-election report)
 - \$50 to "FNDD" for "Advertisement" on January 13, 2010 (should have been included on 30-day pre-election report)
 - \$85 to "Carl Campbell" for an undisclosed purpose on February 13, 2010
 - \$595.38 to "Copy Ship HQ" for an undisclosed purpose on February 13, 2010
 - \$415 to "Studio-Two" for an undisclosed purpose on February 13, 2010
 - \$1,500 to "COTLG" for "consulting svcs" on February 14, 2010
 - \$199 to "Tejano's Restaurant" for "Fundraising" on February 17, 2010
 - \$100 to "Black Business Directory" for "Advertising" on February 20, 2010
17. None of the respondent's reports covering 2009 disclosed an expenditure for political advertising and none of the reports covering 2009 or 2010 disclosed an expenditure to file an application for a place on a ballot in an election.
18. The respondent was informed of the requirement to disclose campaign expenditures, including an expenditure made in the form of a filing fee for an application for a place on the ballot. The respondent stated that he did not think the expenditure was a campaign expenditure because he was not a candidate for the office until after he made the expenditure. To date, the respondent has not corrected his reports to disclose any expenditures for a filing fee.

19. The respondent stated that he received the advertisements at issue in the complaint as a “gift,” but would not provide the date that he accepted the contributions. The respondent was informed of the requirement to disclose all campaign contributions. To date, the respondent has not corrected his reports to disclose any additional expenditures or contributions for advertising.

IV. Findings and Conclusions of Law

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

Disclosure of Office Sought

1. Each report by a candidate must include the candidate’s office sought and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1).
2. “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, including, in pertinent part, the filing of a campaign treasurer appointment or the making of a public announcement of a definite intent to run for public office in a particular election. *Id.* § 251.001(1)(A), (E).
3. A candidate is required to include certain information in a campaign treasurer appointment when it is filed, but a candidate is not required to correct a campaign treasurer appointment to change the office sought. *Id.* §§ 252.001, 252.002, 252.0032; Ethics Commission Rules § 20.205.
4. A candidate for district judge must file campaign finance reports with the commission. ELEC. CODE §§ 254.066, 252.005(1)(C).
5. The respondent was a candidate for judge of the 363rd Judicial District at the time his semiannual report was due on January 15, 2010. The report did not indicate that he sought the office. The respondent corrected the office sought on February 3, 2010, and admitted that the information was incorrect as originally filed. Therefore, there is credible evidence that the respondent violated section 254.061(1) of the Election Code by failing to properly disclose the office sought in the report.

Timely Filing of Campaign Finance Reports

6. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15 and 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 required to be filed, as applicable, and continuing through June 30. *Id.* § 254.063(b). The second report shall be filed not later than January 15 and 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. *Id.* § 254.063(c).

7. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. *Id.* § 254.065.
8. For each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. *Id.* § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning 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 under this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b).
9. A report is late if it is incomplete. Ethics Commission Rules § 18.7(c)(1).
10. The respondent was a candidate for judge of the 363rd District Court and was required to file a campaign finance report by January 15, 2010. The report was originally filed before the due date, but was corrected on February 3, 2010, to disclose required information. Therefore, there is credible evidence that the report was late and that the respondent violated section 254.063(c) of the Election Code in connection with the report.
11. The respondent was also required to file a pre-election report by February 1, 2010, because he was opposed in the March 2, 2010, primary. The report was filed on February 2, 2010. Therefore, there is credible evidence that the respondent violated section 254.064(b) of the Election Code in connection with the report.

Disclosure of Political Expenditures

12. A campaign finance report must include, in pertinent part, 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).
13. A campaign finance report must include, in pertinent part, the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter,

the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1).

14. A campaign finance report must include, in pertinent part, the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6).
15. The complaint alleged that the respondent distributed political advertising in the form of business cards and flyers “no later than September 7, 2009.” The complaint included no additional evidence regarding the time period in which the advertising was distributed. The respondent swore that “all entries are true and correct,” but he did not disclose any expenditures for political advertising or political contributions in 2009 or dispute the period of time in which the advertising was accepted or distributed. The respondent also stated to the commission that he accepted the advertising as a gift. Although the exact value and date of the contribution is not clear, the evidence indicates that the respondent accepted an in-kind political contribution in the form of political advertising during 2009. Thus, regardless of the value of the contribution, the respondent was required to include the value of the contribution in the total amount of political contributions in a campaign finance report covering the period in which the contribution was accepted. The respondent did not disclose the acceptance of any political contributions during 2009. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code by failing to properly disclose the total amount of political contributions in a campaign finance report. There is insufficient evidence that the respondent violated sections 254.031(a)(1) or 254.031(a)(3) of the Election Code in connection with the advertising.
16. The complaint also alleged that the respondent failed to disclose a political expenditure in the form of a \$2,500 filing fee paid to the Dallas County Democratic Party on or about January 2, 2010. The evidence submitted with the complaint supports the allegation and the respondent disclosed no expenditures for a filing fee in 2009 or 2010. The respondent also admitted that he paid the fee from his personal funds and did not disclose it in a report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the filing fee.

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 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 required to be filed, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 and 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.

The respondent also acknowledges that in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning 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 under this chapter, as applicable, and continuing through the 40th day before election day.

The respondent also acknowledges that a campaign finance report by a candidate must include the candidate's office sought and the identity and date of the election for which the report is filed. The respondent also acknowledges that each 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 also acknowledges that each report must include the total amount of all political contributions accepted during 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 \$1,300 civil penalty. The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas, 78711, must receive from the respondent full payment of the \$1,300 civil penalty no later than April 21, 2011, and waives any right to a hearing related to this sworn complaint. The respondent also acknowledges that if the \$1,300 civil penalty is not received by April 21, 2011, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-3100245.

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

Hiram McBeth, III, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director