

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICK PERRY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31007203 AND SC-31007204

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaints SC-31007203 and SC-31007204. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 572.022(c), 572.023(b)(4), and 572.023(b)(5) of the Government Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

Sworn complaint SC-31007203 alleged that the respondent failed to properly disclose rental income in personal financial statements filed in 2008 and 2009, in violation of section 572.023(b)(4) of the Government Code. Sworn complaint SC-31007204 alleged that the respondent failed to properly disclose in personal financial statements filed from 2008 to 2010 each person or financial institution to whom a note or lease agreement existed, in violation of section 572.023(b)(5) of the Government Code, and the names of all persons retaining an interest in real property, in violation of section 572.022(c) of the Government Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Governor.
2. 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(a). The criminal offense for a violation of sections 572.022 and 572.023 of the Government Code is a Class B misdemeanor. GOV'T CODE § 572.034. The

statute of limitations for a Class B misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Allegations relating to information that was required to be disclosed in a personal financial statement (PFS) due before July 2, 2008 (more than two years before the complaint's hand-delivery date), were not within the commission's sworn complaint jurisdiction. Therefore, the allegations relating to the PFS due in 2008 were not considered. The PFSs filed in 2009 and 2010 were within the commission's sworn complaint jurisdiction.

Personal Financial Statements Filed in 2009 and 2010

3. On April 30, 2009, the respondent filed his original PFS covering calendar year 2008, and on February 16, 2010, the respondent filed his original PFS covering calendar year 2009.
4. Part 5 (used for disclosing income received in excess of \$500 that was derived from interest, dividends, royalties, and rents) of the original PFS covering calendar year 2008 and Part 5 of the original PFS covering calendar year 2009 each disclosed one source of income derived from interest, dividends, royalties, and rents.
5. Part 6 (used for disclosing each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year) of the original PFS covering calendar year 2008 and Part 6 of the original PFS covering calendar year 2009 each disclosed that two persons or financial institutions held a note or lease agreement.
6. Part 7A (used for identifying by description all beneficial interests in real property) of the original PFS covering calendar year 2008 and Part 7A of the original PFS covering calendar year 2009 each disclosed an interest in real property in College Station and did not disclose that a person retained an interest in the real property.

Corrections to Personal Financial Statements Filed in 2009 and 2010

7. On July 19, 2010, after receiving notice of the sworn complaint allegations, the respondent filed a corrected PFS covering calendar year 2008 (the original PFS was filed in 2009) and a corrected PFS covering calendar year 2009 (the original PFS was filed in 2010).
8. The respondent's corrected PFS covering calendar year 2008 and corrected PFS covering calendar year 2009 each included the following explanation of correction:

We inadvertently omitted rental income and the mortgage information related to our house in College Station. I am correcting Parts 5, 6, and 7A to rectify the statement.

9. Part 5 of the corrected PFS covering calendar year 2008 disclosed a source of income derived from interest, dividends, royalties, and rents that was not disclosed in the original PFS for the year at issue. The corrected PFS disclosed an individual as the source of the income and disclosed that the amount of the income was between \$5,000 and \$9,999.
10. Part 5 of the corrected PFS covering calendar year 2009 disclosed four sources of income derived from interest, dividends, royalties, and rents that were not disclosed in the original PFS for the year at issue. The corrected PFS disclosed individuals as the sources of the income and disclosed that the amount of the income from each source was between \$500 and \$4,999.
11. The total undisclosed income from both reports was between \$7,000 and \$29,995.
12. Part 6 of the corrected PFS covering calendar year 2008 and Part 6 of the corrected PFS covering calendar year 2009 each disclosed that two banks held a note or lease agreement. The corrected PFSs each disclosed that the amount of the liability for the first note or lease agreement was \$25,000 or more, and that the amount of the liability for the second note or lease agreement was between \$10,000 and \$24,999. The original PFSs for the years at issue did not disclose that the banks held a note or lease agreement.
13. Part 7A of the corrected PFS covering calendar year 2008 and Part 7A of the corrected PFS covering calendar year 2009 each disclosed that two banks retained an interest in real property in College Station.¹ Although the original PFSs for the years at issue each disclosed the real property, the original PFSs did not disclose the names of the banks retaining an interest in the real property.

IV. Findings and Conclusions of Law

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

1. A state officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252, Government Code. GOV'T CODE § 572.021. A financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual's spouse and

¹The banks disclosed in Part 6 of the corrected PFSs covering calendar years 2008 and 2009 were the same, respectively, as the banks disclosed in Part 7A of the corrected PFSs covering calendar years 2008 and 2009.

dependent children if the individual had actual control over that activity for the preceding calendar year. *Id.* § 572.023(a).

2. The account of financial activity includes, in pertinent part, identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents. *Id.* § 572.023(b)(4).
3. The respondent failed to disclose a source of income in excess of \$500 derived from interest, dividends, royalties, and rents in his PFS due in 2009. The respondent failed to disclose four sources of income in excess of \$500 derived from interest, dividends, royalties, and rents in his PFS due in 2010. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(4) of the Government Code.
4. The account of financial activity also includes identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability. *Id.* § 572.023(b)(5).
5. The respondent failed to disclose two financial institutions to whom personal notes for a total financial liability in excess of \$1,000 existed during the years at issue in his PFSs due in 2009 and 2010. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(5) of the Government Code.
6. The individual filing the statement shall report a description of real property by reporting, in pertinent part, the names of all persons retaining an interest in the property. *Id.* § 572.022(c).
7. The respondent failed to disclose the names of two persons retaining an interest in real property in his PFSs due in 2009 and 2010. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.022(c) of the Government 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 state officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252, Government Code. The respondent acknowledges that a financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. The respondent acknowledges that the account of financial activity includes, in pertinent part, identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents. The respondent acknowledges that the account of financial activity also includes identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability. The respondent acknowledges that the individual filing the statement shall report a description of real property by reporting, in pertinent part, the names of all persons retaining an interest in the property. 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 \$1,500 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-31007203 and SC-31007204.

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

Rick Perry, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director