

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ELAINE H. PALMER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120381

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-3120381. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.155 and 255.001 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: 1) accepted political contributions in excess of the contribution limits of the Judicial Campaign Fairness Act, and 2) did not include a proper disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for district judge of the 215th Judicial District (Harris County) in the May 29, 2012, primary election and the November 6, 2012, general election. The complaint alleged that the respondent exceeded the contribution limits of the Judicial Campaign Fairness Act and did not include a proper disclosure statement on her campaign website and postcards.

Contribution Limits

2. In her January 2012 semiannual report, the respondent disclosed a \$7,000 political contribution from a law firm in Houston, Texas. The contribution was disclosed with the date of November 21, 2011.

3. In response to the allegation, the respondent swore that she did not knowingly or intentionally exceed the contribution limits of the Judicial Campaign Fairness Act and that she returned \$2,000 of the contribution to the law firm.
4. The respondent filed a 30-day pre-election report for the primary election on April 27, 2012. In the report, the respondent disclosed a political expenditure of \$2,000 to the law firm on April 16, 2012, with the category of "OTHER – Returned Contribution" and with the purpose of "Returned Political Contribution."
5. According to the 2010 federal census, the population within the 215th Judicial District was 4,092,459.

Disclosure Statement

6. The complaint alleged that the respondent's website and postcards included disclosure statements that were incorrect because they stated that they were from a political committee that did not exist.
7. The website at issue was "www.elainepalmerforjudge.com" and supported the respondent as a candidate. The bottom of the website included the statement, "Political Ad Paid For By Friends Of Elaine H. Palmer Campaign, M. M. Hill Treasurer." The bottom of the home page also stated, "Copyright 2011 Friends of Elaine H. Palmer." The home page also included "An Open Letter From Elaine Palmer" that requested support from Harris County voters and that bore the respondent's signature.
8. The complaint also alleged that the website's home page automatically played an audio recording that "[concluded] with the same statement" on the webpage. The complaint did not include a copy of the audio statement and the respondent modified her website after the complaint was filed. As of February 6, 2013, the website included a video that stated it was political advertising by "Elaine H. Palmer Campaign, M.M. Hill, Treasurer." However, a similar video published on youtube.com on September 5, 2012, stated, "Political ad paid for by Friends of Elaine H. Palmer Campaign, M.M. Hill, Treasurer."
9. The complaint also alleged that the respondent's "campaign mail piece" did not include a proper disclosure statement. The complaint included a copy of a postcard that stated, in pertinent part:

Elect Elaine Palmer
for 215th Civil District Judge

...

Paid Political AD Friends of Elaine H. Palmer Campaign in compliance with the voluntary limits of the Judicial Campaign Fairness Act, M.M. Hill, Treasurer.

10. The postcard also included a return address of “Friends of Elaine H. Palmer Campaign, P. O. Box 131392, Houston, Texas 77219.” The respondent’s campaign treasurer appointment was filed on November 21, 2011, and appointed Ms. M.M. Hill as her campaign treasurer. In campaign treasurer appointments and campaign finance reports, the respondent also disclosed her mailing address as the same post office box as stated in the postcard.

11. In response to the allegations, the respondent swore, in pertinent part:

The ads [at issue in the complaint] should have stated that they were a “Political Ad Paid For By The Elaine H. Palmer Campaign, M.M. Hill Treasurer.”

The “Friends Of” language was a mistake made by a campaign intern and even though I reviewed and approved the advertising, I simply did not catch the error. I take responsibility for the error, have now taken steps to correct it, and certify to this Commission that my campaign advertising will not contain this error going forward. I hope that I have satisfactorily addressed the Commission’s concerns regarding [the complainant’s] complaint with respect to my campaign’s advertising.

12. Commission records did not include any campaign treasurer appointment or campaign finance reports for a political committee named “Friends of Elaine H. Palmer.”

IV. Findings and Conclusions of Law

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

Contribution Limits

1. A judicial candidate or officeholder may not accept political contributions from a person that in the aggregate exceed \$5,000 in connection with an election for a judicial district office if the population of the judicial district is more than one million. ELEC. CODE §§ 253.155(a), (b).
2. A judicial candidate or officeholder may not accept a political contribution in excess of \$50 from a person if the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm and the contribution when aggregated with all political contributions accepted by the candidate or officeholder from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the

law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155. *Id.* § 253.157(a).

3. In Ethics Advisory Opinion No. 342, the commission determined that under the Code Construction Act a law firm is a person. Because a law firm is a person, and a person may not exceed the limit under section 253.155 of the Election Code, contributing more than \$2,500 in the aggregate per election to a candidate for district judge in a judicial district with a population between 250,000 and 1,000,000 is prohibited by that statute. Ethics Advisory Opinion No. 342 (1996). The commission noted that section 253.157 of the Election Code also limits a judicial candidate in what he can accept from persons affiliated with the same law firm. *Id.* at n.1.
4. Ethics Advisory Opinion No. 274 stated that a judicial candidate may not accept from a member of a law firm political contributions exceeding the maximum amount prescribed in section 253.155 of the Election Code.
5. The complaint alleged that the respondent, as a candidate for district judge, exceeded the \$5,000 political contribution limit by accepting a political contribution of \$7,000 from a law firm. Based on the population of the judicial district, the contribution limit under section 253.155 of the Election Code was \$5,000. The respondent accepted the contribution at issue and returned \$2,000 to the law firm after the complaint was filed.
6. The commission's previous advisory opinions clearly held that the contribution limits imposed by section 253.155 of the Election Code apply to law firms as well as individual members of law firms. Although the aggregate limit on contributions from all members of a law firm is \$30,000, each member or person in the firm may only contribute the amount allowed by section 253.155 of the Election Code, and the law firm itself is a person. Thus, in the respondent's circumstances, the respondent was prohibited from accepting more than \$5,000 from the law firm. The respondent accepted a \$7,000 political contribution from the law firm. Therefore, there is credible evidence that the respondent violated section 253.155 of the Election Code.

Disclosure Statement

7. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
8. The complaint alleged that the respondent's website and postcards did not include a proper disclosure statement because their disclosure statements included the name of what appeared to be a non-existent political committee instead of the respondent.

9. The disclosure statements on the website and postcards stated that the website and postcards were paid for by “Friends of Elaine H. Palmer Campaign,” which was somewhat ambiguous and may have suggested that they were paid for by a political committee rather than the candidate. It does not appear that such a political committee had been formed. However, the disclosure statements clearly stated that the website and postcards were political advertising and included the respondent’s full name. In addition, the website included a statement from the respondent that suggested that the respondent was the source of the website and the return address on the postcards was the respondent’s campaign address. The respondent’s campaign treasurer was also identified on both the website and the postcards as the campaign treasurer of “Friends of Elaine H. Palmer Campaign.” Therefore, there is credible evidence that the respondent committed technical or *de minimis* violations of section 255.001(a) 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: 1) a judicial candidate or officeholder may not accept political contributions from a person that in the aggregate exceed \$5,000 in connection with an election for a judicial district office if the population of the judicial district is more than one million. A judicial candidate or officeholder may not accept a political contribution in excess of \$50 from a person if the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm and the contribution when aggregated with all political contributions accepted by the candidate or officeholder from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under section 253.155 of the Election Code; and 2) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, 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-3120381.

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

Elaine H. Palmer, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director