

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ANDREW PEREZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3140374 AND SC-31404101

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on February 1, 2016, to consider sworn complaint SC-3140374 and sworn complaint SC-31404101. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 253.031, and 254.064 of the Election Code and section 571.1242 of the Government Code, laws administered and enforced by the Commission. To resolve and settle these sworn complaints without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegations

Sworn complaint SC-3140374 alleged that the respondent: 1) did not timely file a campaign treasurer appointment; 2) did not timely file a 30-day pre-election campaign finance report; and 3) did not file an 8-day pre-election campaign finance report. Sworn complaint SC-31404101 alleged that the respondent did not report political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for Hidalgo County Clerk in the March 4, 2014, primary election.

Did Not Timely File a Campaign Treasurer Appointment

2. Sworn complaint SC-3140374 alleged that the respondent did not timely file a campaign treasurer appointment.

3. The respondent filed his appointment of campaign treasurer with Hidalgo County on January 15, 2014. However, the respondent's January 2014 semiannual report disclosed that the respondent made a \$1,250 political expenditure to the Hidalgo County Democratic Party on December 9, 2013, for his filing fee.

Did Not Timely File a 30-day Pre-election Report

4. Sworn complaint SC-3140374 alleged that the respondent did not timely file a 30-day pre-election report for the March 4, 2014, primary election.
5. The respondent had an opponent on the ballot in the March 4, 2014, primary election. The respondent did not elect to file on the modified reporting schedule on his appointment of campaign treasurer that was filed on January 15, 2014. Thus, the respondent was required to file pre-election reports.
6. The 30-day pre-election report for the March 4, 2014, primary election was due by February 3, 2014. The respondent filed the 30-day pre-election report at issue on February 11, 2014. The report covered the period from January 1, 2014, through January 23, 2014, and disclosed \$0 in total activity.

Did Not File an 8-day Pre-election Report

7. Sworn complaint SC-3140374 alleged that the respondent did not file an 8-day pre-election report for the March 4, 2014, primary election.
8. The respondent had an opponent on the ballot in the March 4, 2014, primary election. The respondent did not elect to file on the modified reporting schedule on his appointment of campaign treasurer that was filed on January 15, 2014. Thus, the respondent was required to file pre-election reports.
9. The complaint included a copy of an e-mail dated February 25, 2014, from the Elections Operation Manager of Hidalgo County that states that the respondent did not turn in the 8-day pre-election report at issue, which was due by February 24, 2014. The Commission confirmed with the Elections Office of Hidalgo County on September 29, 2015, that the respondent had not filed the 8-day pre-election report at issue or any other reports since filing his 30-day pre-election report for the March 2014 primary election.

Did Not Report Political Expenditures

10. Sworn complaint SC-31404101 alleged that the respondent did not report political expenditures made between January 1, 2014, and March 4, 2014.
11. The complaint included copies of pages from the respondent's Facebook account dated February 10 and 22, 2014, that show campaign signs, a campaign banner, and campaign bumper stickers for the respondent's campaign.
12. The complaint included a copy of the respondent's January 2014 semiannual report. The report covered the period from July 1, 2013, through December 31, 2013, and only disclosed that the respondent paid \$1,250 to the Hidalgo County Democratic Party on December 9, 2013, for his filing fee.
13. In addition, the complaint included a copy of the respondent's 30-day pre-election report. The 30-day pre-election report covered the period from January 1, 2014, through January 23, 2014, and disclosed \$0 in total activity.
14. The respondent had an opponent on the ballot in the March 4, 2014, primary election. The respondent did not elect to file on the modified reporting schedule on his campaign treasurer appointment form that was filed January 15, 2014. Thus, the respondent was required to file pre-election reports. The Commission confirmed with the Elections Office of Hidalgo County on September 29, 2015, that the respondent had not filed the 8-day pre-election report at issue or any other reports since filing his 30-day pre-election report for the March 2014 primary election.
15. In response to the complaint, the respondent submitted an affidavit and attached bank statements and invoices showing all contributions accepted and expenditures made during the pre-election reporting periods. One of the invoices was dated February 11, 2014, and was for \$1,559.34 for campaign banners, bumper stickers, and signs. The invoice indicated that payment was made on February 27, 2014.

Did Not Respond to a Notice of Sworn Complaint

16. Sworn complaint SC-3140374 was filed on March 21, 2014. The Commission sent a notice of the sworn complaint to the respondent by delivery confirmation on March 28, 2014. According to United States Postal Service (USPS) records of the delivery, the notice of this complaint was delivered to the respondent on March 31, 2014. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, and that a response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil

penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by April 14, 2014. The Commission did not receive a response from the respondent.

IV. Findings and Conclusions of Law

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

Did Not Timely File a Campaign Treasurer Appointment

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. ELEC. CODE § 252.001.
2. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
3. Credible evidence based on information disclosed in the respondent's January 2014 semiannual report indicates that the respondent made a campaign expenditure of \$1,250 for his filing fee 37 days before he filed a campaign treasurer appointment. Therefore, there is credible evidence of a violation of sections 252.001 and 253.031(a) of the Election Code.

Did Not Timely File a 30-day Pre-election Report

4. 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. ELEC. CODE § 254.064(a).
5. 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. *Id.* § 254.064(b).
6. Credible evidence indicates that the respondent filed the 30-day pre-election report at issue on February 11, 2014, which was eight days after the filing deadline. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

Did Not File an 8-day Pre-election Report

7. 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. ELEC. CODE § 254.064(a).

8. The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. *Id.* § 254.064(c).
9. Credible evidence indicates that the respondent did not file the 8-day pre-election report at issue. Therefore, there is credible evidence of a violation of section 254.064(c) of the Election Code.

Did Not Report Political Expenditures

10. Each report must include the amount of political expenditures that in the aggregate exceed \$100 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).
11. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
12. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
13. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
14. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
15. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(a) and (b).
16. 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. *Id.* § 254.064(a). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the

period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).

17. The reporting period for the 8-day pre-election report for the March 4, 2014, primary election was from January 24, 2014, through February 22, 2014. Credible evidence establishes that the respondent made a \$1,559.34 political expenditure for campaign materials around February 11, 2014, during the reporting period for the 8-day pre-election report. The respondent was required to report the expenditure of \$1,559.34 on the 8-day pre-election report, which was required to be filed by February 24, 2014. The respondent has not filed the 8-day pre-election report to disclose the political expenditure. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code.

Did Not Respond to a Notice of Sworn Complaint

18. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
19. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b)
20. The respondent received notice of sworn complaint SC-3140374 on March 31, 2014. The respondent was required to respond to the sworn complaint by April 14, 2014. The Commission did not receive a response from the respondent. Therefore, there is credible evidence of a violation of section 571.1242(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 these matters.
3. The respondent acknowledges that: 1) each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code; 2) a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect; 3) 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 second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day; 4) each report must include the amount of political expenditures that in the aggregate exceed \$100 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; and 5) each 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 also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category One violation within 10 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

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 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 if the respondent files the missing 8-day pre-election report and a response to sworn complaint SC-3140374 by April 1, 2016. The Commission imposes a \$2,500 civil penalty if the respondent does not file the missing 8-day pre-election report and a response to sworn complaint SC-3140374 by April 1, 2016.

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-3140374 and SC-31404101.

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

Andrew Perez, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director