

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
FREDERICK P. "RICK" FORLANO,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31410217

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on May 17, 2017, to consider sworn complaint SC-31410217. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031 and 254.063 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 did not file semiannual campaign finance reports and did not properly disclose on a campaign finance report total political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is a former Director for the Burney Road Municipal Utility District (MUD), and was a judicial candidate for County Court at Law #1 in Fort Bend County in the May 4, 2014, primary election.
2. The reports at issue are the January and July 2013 semiannual reports; the January 2014 semiannual report; the July 2014 semiannual report filed as a candidate/officeholder; and the July 2014 semiannual report filed as a judicial candidate.

Timely Filing of Campaign Finance Reports

Semiannual Reports Due as a Candidate/Officeholder for MUD

3. The respondent filed an appointment of a campaign treasurer (CTA) with the MUD on July 23, 2012, and at all times relevant to this complaint had not filed a final report. The respondent filed an appointment of a campaign treasurer by a judicial candidate (JCTA) with Fort Bend County on November 14, 2013. The respondent owed the following reports to the MUD as a non-judicial candidate or officeholder:
 - January 2013 semiannual report due by January 15, 2013;
 - July 2013 semiannual report due by July 15, 2013;
 - January 2014 semiannual report due by January 15, 2014; and
 - July 2014 semiannual report due by July 15, 2014.
4. The respondent sent a copy of a single report covering the period of July 23, 2012, through November 11, 2014, to the Commission on November 13, 2014. This report was also marked as a Final report. The report showed zero activity related to the respondent's non-judicial office held with the MUD.
5. The respondent swore that the report was filed with the MUD on or about November 13, 2014. However, the report the respondent sent to the Commission was not file-stamped by the MUD. The MUD represented to the Commission that the respondent had not filed any reports since 2012. The respondent filed the report with Fort Bend County on April 4, 2017. The respondent re-filed the report with the MUD on April 12, 2017.

Semiannual Report Due as a Judicial Candidate with Fort Bend County

6. The respondent filed a JCTA with Fort Bend County on November 14, 2013, and at all times relevant to this complaint had not filed a final report.
7. The respondent owed the July 2014 semiannual report as a judicial candidate. The report was due by July 15, 2014. On November 12, 2014, the respondent filed a report marked as final that covered from February 23, 2014, through November 10, 2014. Thus, the report included activity that was required by the July 2014 semiannual report. The report disclosed the following activity on the cover sheet:
 - \$3,200 in total political contributions;
 - \$3,907.25 in total political expenditures; and
 - \$0 in total political contributions maintained as of the last day of the reporting period.

Total Political Expenditures

8. The respondent was an opposed judicial candidate in the May 4, 2014, primary election. The respondent disclosed the following activity on the cover sheet of the 30-day pre-election report:
 - \$120 in total political expenditures of \$100 or less; and
 - \$2,405 in total political expenditures.
9. The respondent itemized on Schedule F (used to disclose political expenditures) two expenditures totaling \$2,405. In response to the complaint, the respondent admitted that he did not add the \$120 to the amount of total political expenditures due to confusion over how to correctly fill out the report. On November 12, 2014, the respondent corrected the report to disclose \$2,525 in total political expenditures.

IV. Findings and Conclusions of Law

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

Timely Filing of Campaign Finance Reports

1. A 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. ELEC. CODE § 251.001(1).
2. Examples of affirmative action include the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(a).
3. An officeholder who becomes a candidate is subject to the reporting requirements of a candidate. *Id.* § 254.096. A candidate shall file two reports each year. *Id.* § 254.063(a).
4. 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).
5. 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).

6. A non-judicial officeholder who becomes a judicial candidate must file two reports, one reporting non-judicial activity and the other reporting judicial activity. Both reports must be filed with the filing authority where the candidate's current campaign treasurer appointment is filed. Alternatively, a candidate as such may also file a single report disclosing all activity but must distinguish in the report non-judicial activity and judicial activity. *See Ethics Advisory Opinion No. 465 (2005).*

Semiannual Reports Due as a Candidate/Officeholder for MUD

7. The respondent was required to file the January and July 2013 semiannual reports with the MUD because he had a campaign treasurer appointment on file with the MUD during each reporting period. The respondent did not timely file the January and July 2013 semiannual reports with the MUD. Therefore, there is credible evidence of violations of section 254.063 of the Election Code with regard to those two campaign finance reports.
8. The respondent became a judicial candidate on November 14, 2013. The respondent was required to file the January and July 2014 semiannual reports covering his activity as a MUD candidate/officeholder with Fort Bend County. The respondent did not timely file the January and July 2014 semiannual reports with Fort Bend County. Therefore, there is credible evidence of violations of section 254.063 of the Election Code with regard to those two campaign finance reports.

Semiannual Report Due as a Judicial Candidate with Fort Bend County

9. The respondent became a judicial candidate on November 14, 2013, when he filed a JCTA with Fort Bend County. The respondent did not timely file a July 2014 semiannual report disclosing his judicial activity with Fort Bend County. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code with regard to the July 2014 semiannual report filed as a judicial candidate.

Total Political Expenditures

10. Each campaign finance report filed under this chapter 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).
11. The respondent under-reported his total political expenditures during the 30-day pre-election reporting period by \$120. Therefore, there is credible evidence of a violation of section 254.031(a)(6) 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) an officeholder who becomes a candidate is subject to the reporting requirements of a candidate; 2) a candidate shall file two reports 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 required to be filed 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 and continuing through December 31; 3) a non-judicial officeholder who becomes a judicial candidate must file campaign finance reports that distinguish between judicial and non-judicial activity. The reports must be filed with the filing authority where the candidate's current campaign treasurer appointment is filed; and 4) 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 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 \$300 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-31410217.

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

Frederick P. "Rick" Forlano, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director