

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ELAINE HUBBARD PALMER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31606159, SC-31607163,
AND SC-31607167

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 13, 2016, to consider sworn complaints SC-31606159, SC-31607163, and SC-31607167. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.063 and 254.064 of the Election Code.

II. Allegations

The three sworn complaints allege the respondent did not file six campaign finance reports: the July 2015 semiannual report, the January 2016 semiannual report, the 30-day pre-election report for the March 2016 primary election, the 8-day pre-election report for the March 2016 primary election, the runoff report for the May 2016 primary runoff election, and the July 2016 semiannual report.

III. Facts Supported by Credible Evidence

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

1. Collectively, the three sworn complaints alleged the respondent, as a candidate and officeholder for Judge of the 215th Judicial District Court in Harris County, Texas, did not file six campaign finance reports. Sworn complaint SC-31606159 alleged the respondent did not file the July 2015 and July 2016 semiannual reports; sworn complaint SC-31607163 alleged the respondent did not file the 30-day and 8-day pre-election reports for the March 1, 2016, primary election and the runoff report in connection with the May 24, 2016, primary runoff election; and sworn complaint SC-31607167 alleged the respondent did not file the July 2016 semiannual report.

2. The respondent was elected as judge for the 215th Judicial District in the November 2012 election. She filed a campaign treasurer appointment on November 21, 2011, in connection with that election. At all times relevant to this complaint, she did not file a final report and had an active campaign treasurer appointment on file with the Commission.
3. The respondent was opposed in the March 2016 primary election and went to a runoff election. She won the subsequent May 2016 primary runoff election. She has an opponent whose name is to appear on the ballot in the November 2016 general election.
4. In response to the complaint, the respondent admitted that she did not file the six reports at issue. She swore “the reports were prepared and were to be forwarded to the Ethics Commission. The complained of reports are handled and will all be filed on or before July 18, 2016, with the Commission.”
5. The respondent filed the July 2015 semiannual report on July 19, 2016. She had already been assessed a \$500 late penalty for that report through the administrative process that she has not yet paid. The respondent did not file the other missing reports until September 22 and 23, 2016.
6. The July 2015 semiannual report was due by July 15, 2015. The respondent did not file the report until July 19, 2016. The report was 371 days late (one year, five days). The report disclosed \$6,350 in political contributions and \$5,721 in political expenditures.
7. The January 2016 semiannual report was due by January 15, 2016. The respondent did not file the report until September 22, 2016. The report was 252 days late (eight months, eight days). The report disclosed \$3,300 in political contributions and \$19,538.81 in political expenditures.
8. The 30-day pre-election report for the March 2016 primary election was due by February 1, 2016. The respondent did not file the report until September 22, 2016. The report was 234 days late (seven months, 21 days). The report disclosed \$2,700 in political contributions and \$0 in political expenditures.
9. The 8-day pre-election report for the March 2016 primary election was due by February 22, 2016. The respondent did not file the report until September 23, 2016. The report was 215 days late (seven months, two days). The report disclosed \$18,900 in political contributions and \$14,045 in political expenditures.
10. The runoff report for the May 2016 primary runoff election was due by May 16, 2016. The respondent did not file the report until September 23, 2016. The report was 131 days late (four months, eight days). The report disclosed \$9,350 in political contributions and \$34,035 in political expenditures.

11. The July 2016 semiannual report was due by July 15, 2016. The respondent did not file the report until September 23, 2016. The report was 71 days late (two months, nine days). The report disclosed \$10,125 in political contributions and \$2,563 in political expenditures.

IV. Findings and Conclusions of Law

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

1. “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. A candidate shall file two reports for each year as provided by this section. *Id.* § 254.063(a). 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 under this subchapter, as applicable, and continuing through June 30. *Id.* § 254.063(b). 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 under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).
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. *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 and 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).
5. The respondent filed a campaign treasurer appointment when she ran for district court judge in the 2012 election and did not file a final report at any time relevant to this complaint. She was therefore a candidate and required to file campaign finance reports in accordance with sections 254.063 and 254.064 of the Election Code. (As a district court judge, the respondent was also required to file campaign finance reports as an officeholder). *See id.* § 254.093.

6. As a candidate, the respondent was required to file the July 2015 semiannual report by July 15, 2015. The respondent did not file the report until July 19, 2016. Therefore, there is credible evidence of a violation of section 254.063(b) of the Election Code with respect to this report.
7. As a candidate, the respondent was required to file the January 2016 semiannual report by January 15, 2016. The respondent did not file the report until September 22, 2016. Therefore, there is credible evidence of a violation of section 254.063(c) of the Election Code with respect to this report.
8. As an opposed candidate not filing under the modified reporting schedule, the respondent was required to file the 30-day pre-election report for the March 2016 primary election by February 1, 2016. The respondent did not file the report until September 22, 2016. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code with respect to this report.
9. As an opposed candidate not filing under the modified reporting schedule, the respondent was required to file the 8-day pre-election report for the March 2016 primary election by February 22, 2016. The respondent did not file the report until September 23, 2016. Therefore, there is credible evidence of a violation of section 254.064(c) of the Election Code with respect to this report.
10. As an opposed candidate in a runoff election not filing under the modified reporting schedule, the respondent was required to file the runoff report for the May 2016 primary runoff election by May 16, 2016. The respondent did not file the report until September 23, 2016. Therefore, there is credible evidence of a violation of section 254.064(e) of the Election Code with respect to this report.
11. As a candidate, the respondent was required to file the July 2016 semiannual report by July 15, 2016. The respondent did not file the report until September 23, 2016. Therefore, there is credible evidence of a violation of section 254.063(b) of the Election Code with respect to this report.

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 a candidate shall file two reports for each year as provided by section 254.063 of the Election Code; 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 under Chapter 254 of the Election Code, subchapter C, as applicable, 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 under Chapter 254 of the Election Code, subchapter C, as applicable, and continuing through December 31.
4. The respondent further 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 and 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 chapter 254 of the Election Code, as applicable, and continuing through the 40th 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 and covers the period beginning the 39th day before election day and continuing through the 10th day before election day.
5. The respondent further acknowledges that in addition to other required reports, an opposed candidate in a runoff election shall file one report for that election. The runoff election report must be received by the authority with whom the report is required to be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

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 \$15,000 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 sworn complaints SC-31606159, SC-31607163, and SC-31607167.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$15,000 civil penalty no later than May 10, 2017, and agrees to waive any right to a hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by May 10, 2017, then the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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

Elaine Hubbard Palmer, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director