

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARK S. YARBROUGH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3180399

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 3, 2018, to consider sworn complaint SC-3180399. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.063, 254.064, and 254.036 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) did not timely file the January 2018 semiannual campaign finance report; 2) did not timely file the 30-day and 8-day pre-election reports for the March 6, 2018, primary election; and 3) did not execute an affidavit on the January 2018 semiannual report.

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 Denton County District Clerk, in the March 6, 2018, primary election.

January 2018 Semiannual Report

2. The complaint alleged that the respondent did not timely file the January 2018 semiannual report.
3. Records on file with the Denton County Clerk's Office show that the respondent filed a campaign treasurer appointment on October 12, 2016. As a candidate, the respondent was required to file the January 2018 semiannual report by January 16, 2018. Records on file with the Denton County Clerk show that the respondent filed the January 2018 semiannual report on February 20, 2018.

Pre-Election Reports

4. The complaint alleged that the respondent did not timely file the 30-day and 8-day pre-election reports for the March 6, 2018, primary election.
5. The respondent had opponents in the March 6, 2018, primary election whose names appeared on the ballot. The respondent did not file the modified reporting declaration with his campaign treasurer appointment.
6. The 30-day pre-election report was due by February 5, 2018, and the 8-day pre-election report was due by February 26, 2018. After the complaint was filed, the respondent filed the 30-day and 8-day pre-election reports on April 17, 2018. The reports indicate that the respondent accepted political contributions totaling \$225 and made political expenditures totaling \$1,996.39 during the pre-election reporting periods.

Report Affidavit

7. The complaint alleged, and credible evidence shows, that the respondent signed the affidavit accompanying his January 2018 semiannual report, but did not have the affidavit notarized.
8. In response to the complaint, the respondent filed a completed affidavit.

IV. Findings and Conclusions of Law

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

January 2018 Semiannual Report

1. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). 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).
2. Credible evidence shows the respondent did not timely file the January 2018 semiannual report. Therefore, there is credible evidence of a violation of section 254.063(c) of the Election Code.

Pre-Election Reports

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. ELEC. CODE § 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. The report

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, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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).

4. Credible evidence shows that the respondent did not timely file the 30-day and 8-day pre-election reports for the March 6, 2018, primary election. Therefore, there is credible evidence of a violation of section 254.064(b) and (c) of the Election Code.

Report Affidavit

5. Each report not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h).
6. There is credible evidence the respondent did not properly execute the affidavit on the January 2018 semiannual report. Therefore, there is credible evidence of a violation of section 254.036(h) 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 candidate shall file two reports for each year. 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; 2) 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 report 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, 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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day; and 3) each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. 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.

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-3180399.

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

Mark S. Yarbrough, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director