

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
STEPHEN D. PENNINGTON,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-32008160

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) met on June 17, 2021, to consider sworn complaint SC-32008160 at a formal hearing held in accordance with Sections 571.061, 571.121, 571.126-.132, 571.137, and 571.139 of the Government Code. A quorum of the Commission was present and proceeded with the formal hearing in the respondent's absence.

II. Allegation

The complaint alleged that the respondent did not file a semiannual report by the July 15, 2020, filing deadline, in violation of Section 254.063(b) of the Election Code.

III. Findings of Fact

The evidence admitted in the formal hearing or officially noticed supported the following findings of fact:

1. Sworn complaint SC-32008160 was filed on August 3, 2020.
2. The complaint alleged that the respondent did not file a semiannual report by the July 15, 2020, filing deadline. The Commission accepted jurisdiction over the complaint on August 10, 2020.
3. The respondent was a candidate for Bexar County Tax Assessor-Collector in the March 3, 2020, primary election, and the November 3, 2020, general election. The respondent was unsuccessful in the November 3, 2020, general election.
4. The respondent filed a campaign treasurer appointment with Bexar County on September 5, 2019. The last report filed by the respondent was the 8-day pre-election report for the March 3, 2020, primary election, which was filed late on February 25, 2020. On the same day, the respondent also filed a 30-day pre-election report that was due on February 3, 2020. Neither of these reports were marked as a final report.

5. In response to the complaint, the respondent stated that his team was confused by the Commission filing schedule for local candidates posted on the Commission website. Specifically, the respondent stated that his team only committed to memory the section entitled “Reports due before the November 3, 2020, general election” because this particular section was relevant to the campaign. The respondent also stated that he lost access to his filing account with the Commission.¹
6. The Commission held a preliminary review hearing on December 1, 2020. At the preliminary review hearing, the respondent provided testimony that he hired a company to prepare and file his campaign finance reports and that he thought the report had been filed. The respondent did not provide any evidence to indicate that the report was filed or was attempted to be filed. At the conclusion of the preliminary review hearing, the Commission found credible evidence of a violation of Section 254.063 of the Election Code and proposed a resolution to the respondent. The respondent did not agree to the resolution and did not make any attempts to settle the complaint.
7. The Commission ordered a formal hearing after the Commission and respondent were unable to settle and resolve the sworn complaint following the preliminary review hearing. The formal hearing was held on June 17, 2021. As of the date of the formal hearing, Bexar County records showed that the respondent had not filed the July 2020 semiannual report.

IV. Conclusions of Law

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

1. Disposition of this case is within the jurisdiction of the Commission. Tex. Gov’t Code § 571.061.
2. A candidate shall file two reports for each year. Tex. Elec. Code § 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).
3. “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. *Id.* § 251.001(1).
4. As a candidate with an active campaign treasurer appointment on file, the respondent was required to file a July 2020 semiannual report by July 15, 2020. Bexar County records show that the respondent failed to file the report. Therefore, the Commission finds by the

¹ Although not required, the respondent created an account with the Commission to use the Commission’s filing application to prepare his campaign finance reports electronically.

preponderance of the evidence that the respondent violated Section 254.063(b) of the Election Code.

V. Default Judgment

1. The formal hearing was held on June 17, 2021, at the State Capitol Extension, Room E1.014, in Austin, Texas. Mr. Pennington failed to appear at the hearing.
2. If a respondent fails to appear at a formal hearing, the Commission may proceed in the respondent's absence and may by vote deem admitted the allegation in the notice of formal hearing and issue a default decision. 1 Tex. Admin. Code § 12.173. In order to proceed in the respondent's absence, there must be adequate proof that the respondent received notice of the hearing and that the notice also stated that the allegation could be deemed admitted, and relief sought, against the respondent if he failed to appear at the hearing. *Id.* § 12.173(b)(1)-(3).
3. All notices by mail were sent to the respondent's last known mailing address, as shown by Commission records, of 8015 Bandera Road, Suite 103, San Antonio, Texas 78250-5136. The notices were also sent to the email addresses provided by the respondent to Commission staff. Finally, the notices stated that if the respondent failed to appear at the hearing, the allegation may be admitted as true, and the relief sought may be granted by default.
4. The first notice of the formal hearing was sent to the respondent on March 18, 2021, by United States Postal Service (USPS) certified mail, return receipt requested, delivery confirmation, and by email. The notice stated that the hearing would be held on June 17, 2021, at 9:00 a.m. at the Capitol Extension, Room E1.014, in Austin, Texas. USPS records show that the notice was delivered on March 20, 2021.
5. A second notice of the formal hearing was sent to the respondent on April 19, 2021, by USPS certified mail, return receipt requested, delivery confirmation, and by email. Like the first notice, this notice also stated that the hearing would be held on June 17, 2021, at 9:00 a.m. at the Capitol Extension, Room E1.014, in Austin, Texas.
6. The Commission finds that the notices sent to the respondent of the June 17, 2021, formal hearing, met the requirements of Section 12.173(b) of the Ethics Commission Rules and that the respondent received legally sufficient notice. Tex. Gov't Code §§ 571.126, 571.032, 2001.051, 2001.052; 1 Tex. Admin. Code §§ 12.103, 12.173. The respondent did not respond to the notices of formal hearing or appear at the hearing, despite multiple notices from the Commission and attempts by Commission staff to communicate with the respondent. Having received legally sufficient notice of the formal hearing, the Commission proceeded in default pursuant to Section 12.173 of the Ethics Commission Rules, admitted the allegation in the notice, and issues this Final Order.

VI. Confidentiality

This final order is not confidential under Sections 571.132 and 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. The respondent's lack of good faith and history of prior violations are relevant to the appropriate penalty for this sworn complaint. In particular, the respondent's failure to participate in the formal hearing, and two prior late-filing violations are factors that the Commission considered in assessing the civil penalty. *See In Re Stephen D. Pennington*, SC-3200255 and SC-3200389 (2020).
4. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$5,000. If the respondent does not pay the \$5,000 civil penalty within 30 days of the date of this order, then the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Date: _____

FOR THE COMMISSION

Mary K. "Katie" Kennedy
Chair
Texas Ethics Commission