

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SUSAN DELGADO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2510166

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 23, 2006, to consider sworn complaint SC-2510166. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(8), 254.063, and 254.064 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to file her 30-day and 8-day pre-election reports in connection with the November 2004 election. The complaint further alleges that the respondent's January 2005 semiannual report was filed late. Finally, the complaint alleges that the respondent's January 2005 semiannual report failed to disclose the amount of political contributions maintained as of the last day of the reporting period.

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 state senate.
2. Commission records show that on September 20, 2004, the respondent filed her campaign treasurer appointment and signed the declaration of intent not to exceed \$500 in political contributions or political expenditures in connection with the election.
3. The respondent did not file a 30-day or an 8-day pre-election report in connection with the November 2004 election.
4. The respondent filed a campaign finance report on April 5, 2005, disclosing that between October 4, 2004, and October 27, 2004, the respondent made political expenditures from

personal funds totaling \$1,930.09. Of these expenditures, \$1,072.21 was made during the reporting period for the 8-day pre-election report.

5. There is no evidence that the respondent accepted political contributions or made political expenditures before October 4, 2004.
6. On April 5, 2005, the respondent filed her January 2005 semiannual report. The respondent previously submitted an affidavit of defense related to the late filing of the report. Commission records show that the commission has already considered and waived the fine for this late filed report due to the sickness of a family member.
7. The respondent failed to report political contributions maintained as of the last day of the reporting period on her January 2005 semiannual report filed April 5, 2005. The respondent left this field of the report blank. The instructions to the form state: "Enter "0" if you do not maintain political contributions, including interest or other income on those contributions, as of the last day of the reporting period."
8. The respondent swears that she left political contributions maintained blank because she did not have any political contributions maintained to report.

IV. Findings and Conclusions of Law

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

1. For each election in which a person is a candidate who has an opponent whose name is to appear on the ballot, the candidate shall file a 30-day and an 8-day pre-election report. ELEC. CODE § 254.064.
2. The reporting period for the 30-day pre-election report begins 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 continues through the 40th day before election day. ELEC. CODE § 254.064.
3. The reporting period for the 8-day pre-election report begins on the 39th day before election day and continues through the 10th day before election day. ELEC. CODE § 254.064.
4. A candidate filing under the modified reporting procedures is not required to file pre-election reports. ELEC. CODE § 254.184. An opposed candidate that has elected modified reporting and that exceeds \$500 in political contributions or political expenditures in the election shall file 30-day or 8-day pre-election reports, as applicable. ELEC. CODE § 254.183(a).
5. The respondent filed a declaration of intent not to exceed the \$500 limit on political expenditures or political contributions. Therefore, she was not required to file 30-day or 8-day pre-election reports unless she exceeded the \$500 threshold.

6. The respondent exceeded the \$500 threshold during the period covered by the 8-day pre-election report. The respondent was not required to file a 30-day pre-election report but the respondent was required to file an 8-day pre-election report.
7. The respondent did not file an 8-day pre-election report. Therefore, there is credible evidence of a violation of section 254.064 of the Election Code. The commission imposes a \$500 civil penalty.
8. A candidate shall file a report not later than January 15th of each year. ELEC. CODE § 254.063. The respondent did not file her January 2005 semiannual report by the filing deadline. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.
9. Because the late report was considered in the administrative fine process and the civil penalty was waived, no civil penalty is imposed for the January 2005 semiannual report.
10. A candidate must report the amount of political contributions maintained as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
11. In this case the amount of political contributions maintained was zero, but the respondent left the form blank where it requested the amount of political contributions maintained.
12. Because political contributions maintained were not disclosed, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code. The commission imposes no penalty for this violation.

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 each campaign finance report must disclose political contributions maintained as of the last day of the reporting period. The respondent acknowledges that a candidate must file a January semiannual report not later than January 15 or the next business day when the 15th falls on a Saturday, Sunday, or holiday. The respondent also 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 a 30-day and an 8-day pre-election 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the failure to report the 8-day pre-election report violation described under Sections III and IV.

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-2510166.

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

Susan Delgado, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director