

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
DAVID S. MCIVER, JR.,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-270335

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008 to consider sworn complaint SC-270335. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031(a)(1), 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 timely file his July 2006 and January 2007 semiannual campaign finance reports, and his 30-day pre-election campaign finance report for the November 2006 election. The complaint also alleges that the respondent included incorrect or incomplete information on campaign finance reports and failed to disclose notice of support from political committees.

### III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful opposed incumbent candidate for school board trustee with the North Harris Montgomery Community College District (NHMCCD) in the November 7, 2006, election. The election had originally been scheduled for May 13, 2006, but due to various legal issues was held on November 7, 2006. The respondent had a campaign treasurer in effect during the period at issue.

**Failure to Timely File Campaign Finance Reports**

2. The complaint alleges that the respondent failed to timely file his July 2006 and January 2007 semiannual reports, and his 30-day pre-election report for the November 2006 election.
3. The respondent's July 2006 semiannual report is file stamped July 27, 2006. The report disclosed total political contributions of \$500, and total political expenditures of \$200. The respondent's 30-day pre-election report for the November 2006 election is file stamped October 26, 2006. The report discloses total political contributions of \$500 and total political expenditures of \$200. These appear to be the same political contributions and political expenditures disclosed on previous reports. The respondent's January 2007 semiannual report is file stamped January 26, 2007. The report discloses total political contributions of \$250 and total political expenditures of approximately \$1,390.
4. The respondent filed a sworn response. The respondent's affidavit states that his reports were not filed timely. The respondent's affidavit states that during the reporting periods in question there was a May election that was cancelled, his company was going through a merger, his mother became ill and passed away the week of Thanksgiving, and he lost his re-election bid at the election held in November.

**Incomplete or Incorrect Campaign Finance Reports**

5. The complaint alleges that the respondent's 8-day pre-election report for the May 2006 election, July 2006 semiannual report, and 30-day pre-election report for the November 2006 election contain duplicate data.
6. The 8-day pre-election, July 2006 semiannual, and 30-day pre-election reports all disclose a contribution dated "March 30" from Andrews & Kurth Texas PAC for \$500. The 8-day pre-election report for the May 2006 election discloses an undated Schedule G political expenditure made from personal funds of \$200 to NHMCCD for the respondent's filing fee. The July 2006 semiannual report discloses the same information with an additional note that the fee was returned after the election was cancelled. The 30-day pre-election report discloses an August 29, 2006, Schedule F political expenditure of \$200 to NHMCCD for the respondent's filing fee.
7. The complaint alleges that the respondent failed to properly disclose the total political contributions maintained on his 8-day pre-election report for the May 2006 election, July 2006 semiannual report, and 30-day pre-election report for the November 2006 election.
8. The 8-day pre-election report discloses \$500 for total political contributions maintained as of the last day of the reporting period. There is no evidence that this amount was not correct. (The report discloses nothing for total political contributions of \$50 or less, other than

pledges, loans, or guarantees of loans, and \$500 for total political contributions. The report discloses \$200 for total expenditures.) The report includes a Schedule G (Political Expenditures From Personal Funds) which discloses a \$200 expenditure.

9. The July 2006 semiannual report discloses \$500 for total political contributions maintained as of the last day of the reporting period. (The report discloses nothing for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and \$500 for total political contributions. The report discloses \$200 for total expenditures.) The report includes a Schedule G (Political Expenditures From Personal Funds) which discloses a \$200 expenditure with a note in the purpose box that states, "Filing fee – Note – Fee was refunded after election was cancelled."
10. The 30-day pre-election report discloses \$300 for total political contributions maintained as of the last day of the reporting period. (The report discloses nothing for total political contributions of \$50 or less, other than pledges, loans, or guarantees of loans, and \$500 for total political contributions. The report discloses \$200 for total expenditures.) The report does not include a Schedule G (Political Expenditures From Personal Funds).
11. The respondent's affidavit states that, after reviewing the campaign reports in question, he can see where he did not follow the instructions on how the contributions and distributions were reported.

#### **Failure to Disclose Receipt of Notice from Political Committees Supporting the Respondent**

12. The complaint alleges that the respondent failed to disclose receipt of notice from two specific-purpose political committees that were supporting him.
13. Friends of NHMCCD's 8-day pre-election report for the November 7, 2006, election disclosed that the committee supported David McIver as a candidate for and assisted him as an officeholder on the NHMCCD board of trustees. Citizens To Keep The NHMCCD Trustees's 8-day pre-election report for the May 13, 2006, election disclosed that the committee supported David McIver as a candidate for and assisted him as an officeholder on the NHMCCD board of trustees.
14. The respondent's affidavit states that he never received any written notice from any political committees. However, the evidence shows that political expenditures made by "Friends of NHMCCD" and "Citizens to Keep the NHMCCD Trustees" to support the respondent were approved by the respondent.

#### **IV. Findings and Conclusions of Law**

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

**Failure to Timely File Campaign Finance Reports**

1. A candidate is required to file two reports for each year, the first report is required to be filed not later than July 15, and cover 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; the second report shall be filed not later than January 15, and cover 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. ELEC. CODE § 254.063.
2. The respondent had a campaign treasurer appointment in effect during the period at issue which triggered the requirement to file semiannual reports as a candidate. A candidate has the duty to file semiannual reports until the candidate terminates his campaign treasurer appointment. ELEC. CODE § 254.065. The respondent never terminated his campaign treasurer appointment, thus, he never terminated the requirement to file semiannual reports as a candidate. (Section 254.093 of the Election Code requires an officeholder with no campaign treasurer in effect to file semiannual campaign finance reports. That section is not at issue because the respondent was required to file as a candidate.)
3. The evidence indicates that the respondent failed to timely file his July 2006 and January 2007 semiannual reports. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code and credible evidence that the respondent did not violate section 254.093 of the Election Code.
4. 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 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 required report, as applicable, and continuing through the 40th day before election day. The second report must 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. ELEC. CODE § 254.064.
5. The evidence indicates that the respondent failed to timely file his 30-day pre-election report for the November 2006 election. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code.

**Incorrect or Incomplete Campaign Finance Reports**

6. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or

- committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
7. The evidence indicates that the respondent reported the March 30, 2006, contribution of \$500 on each of the reports at issue. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code by re-reporting the contribution at issue on the July 2006 semiannual report and the 30-day pre-election report.
  8. The evidence indicates that the respondent disclosed his expenditure for the filing fee for the May 2006 election on his 8-day pre-election report and on his July 2006 semiannual report. The entry on his July 2006 semiannual report notes that the expenditure was returned. It is not a violation to make an entry on one's report to explain that an expenditure had been returned, although, the proper schedule to reflect a returned expenditure is Schedule K (Credits). The expenditure for a filing fee disclosed on the respondent's 30-day pre-election report is a different expenditure from the one disclosed on the respondent's 8-day pre-election report for the May 2006 election. The expenditure on that report was the filing fee for the May 2006 election whereas the expenditure on the 30-day pre-election report was the filing fee for the November 2006 election. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code as to these entries on his reports.
  9. Each report must include as of the last day of a reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
  10. There is no evidence that the amount of total political contributions maintained reported on the respondent's 8-day pre-election report is incorrect. Therefore, there is no credible evidence that the respondent violated section 254.031(a)(8) of the Election Code as to the 8-day pre-election report.
  11. As discussed above, the respondent re-reported the March 30, 2006, contribution of \$500 on his July 2006 semiannual report and 30-day pre-election report for the November 2006 election. The evidence indicates that the amount disclosed for total political contributions maintained of \$500 on the July 2006 semiannual report is correct since there were not actually any additional contributions and there were no expenditures from political contributions. The evidence indicates that the amount disclosed for total political contributions maintained of \$300 on the 30-day pre-election report is also correct since again there were not actually any additional contributions and the total political contributions maintained has been reduced by the Schedule F expenditure of \$200. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code as to the July 2006 semiannual report or the 30-day pre-election report.

**Failure to Disclose Receipt of Notice from Political Committees Supporting the Respondent**

12. Each report by a candidate must include for each political committee from which the candidate received notice that the political committee is supporting the candidate, the committee's full name and address, an indication of whether the committee is a general-purpose or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. ELEC. CODE § 254.061.
13. Expenditures by a political committee for a candidate that are approved by a candidate are political contributions to the candidate. Although the respondent now swears he received no actual written notice from the committees at issue, the evidence shows that he accepted political contributions and failed to disclose the contributions on his campaign finance reports. Thus, the evidence is insufficient to show a violation of section 254.061 of the Election Code, but there is credible evidence that the respondent violated section 254.031 of the Election Code with respect to the political contributions from the committees.

**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 a candidate is required to file two reports for each year, the first report is required to be filed not later than July 15, and cover 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; the second report shall be filed not later than January 15, and cover 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. The respondent also acknowledges that 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 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 required report, as applicable, and continuing through the 40th day before election day. The second report must 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. The respondent also acknowledges that each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. 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.

### 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-270335.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
David S. McIver, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director