

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HILDA G. CACERES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2910225

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-2910225. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001 and 253.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: (1) failed to timely file a campaign treasurer appointment; (2) accepted campaign contributions or made or authorized campaign expenditures at a time when she did not have a campaign treasurer appointment in effect; and (3) represented in campaign communications that she held a public office that she did not hold at the time the representations were made.

III. Facts Supported by Credible Evidence

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

1. During the time relevant to this complaint, the respondent was a candidate for Justice of the Peace, Precinct 5, in the Hidalgo County March 2010 Democratic Party primary election.
2. The allegations concerned signs, which state: "JUDGE HILDA CACERES 2010."

Appointment of Campaign Treasurer/Campaign Contributions and Expenditures

3. The complaint was postmarked by the United States Postal Service on October 9, 2009, and included photographs of the signs at issue.

4. The signs were displayed at various locations within the precinct.
5. The signs included a political advertising disclosure statement, which states: “Pol. Ad. Paid by: Citizens for Better Government.”
6. Neither of the local filing authorities for the City of Elsa or Hidalgo County had any records of a political committee named Citizens for Better Government. According to Ethics Commission records, a general-purpose political committee named Citizens for Better Government with an address in The Colony, Texas, dissolved in July 1996.
7. On December 4, 2009, the respondent joined MySpace, a social networking website. The respondent customized her profile page and chose the following Uniform Resource Locator (URL) to use as her personal address on the web: “www.myspace.com/judgehildacaceres.” The respondent created a photo album called “Campaign Signs” and uploaded pictures of people putting up the signs at issue. On December 6, 2009, the respondent posted the following comment on her MySpace page: “Working on Campign [*sic*].”
8. The domain name of “www.judgehildacaceres.com” was registered on December 4, 2009. The website contained information regarding the respondent’s biography, campaign platform, news and events, photo gallery, volunteering, and campaign headquarters. The bottom of the website included a notice stating: “Copyright 2010 Hilda Caceres Campaign, Hidalgo County Pct. 5, Elsa, Texas.” Also included on the website was a link to the respondent’s Myspace page.
9. The local filing authority provided copies of the respondent’s campaign treasurer appointment and January 2010 semiannual campaign finance report. The respondent filed a campaign treasurer appointment on December 9, 2009, and a semiannual report on January 26, 2010, covering the period from December 9, 2009, through December 31, 2009.
10. The respondent’s January 2010 semiannual report did not disclose a political contribution from “Citizens for Better Government.” The report disclosed a political expenditure of \$519.60 to “Color Signs” on December 21, 2009, for the purpose of “Signs for Campaign kickoff.” The signs at issue in this complaint had been displayed since at least October 2009.
11. In response to the allegations, the respondent’s attorney submitted a written statement in which he stated that at the time of putting up the signs at issue, the respondent had not decided to run or what position to challenge, and the respondent’s intent in putting up the signs was to gauge the potential for public support.

Use of Office Title

12. The complaint alleged that the respondent's use of "judge" in the signs at issue was a misleading use of office title because the respondent was a judge for the City of Elsa but not in the other cities or townships where the signs were posted.
13. The Elsa city council first appointed the respondent to serve as alternate judge of the municipal court on October 16, 2007. The city council subsequently appointed the respondent to serve as municipal judge on July 21, 2009.
14. The respondent's attorney stated that the respondent was well known in eastern Hidalgo County and that the signs at issue "merely state that she is a judge, which in that area all knew her as a municipal judge."

IV. Findings and Conclusions of Law

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

Appointment of Campaign Treasurer/Campaign Contribution and Expenditures

1. Each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
2. "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. Examples of affirmative action include: (1) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement; (2) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication; and (3) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure. *Id.* § 251.001(1).
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
4. "Campaign contribution" means, in relevant part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).

5. “In-kind contribution” means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. Ethics Commission Rules § 20.1(8).
6. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. ELEC. CODE § 251.001(7).
7. Before she filed a campaign treasurer appointment, the respondent registered an Internet website that she used for her justice of the peace campaign. The respondent posted numerous signs that appeared to support her as a candidate for a 2010 election. Additionally, the respondent posted photographs and comments of campaign activity on an Internet website. All of these are affirmative acts to gain nomination or election to public office. Therefore, the respondent was a candidate for public office before she filed a campaign treasurer appointment on December 9, 2009.
8. In addition, the respondent was involved in distributing and displaying the signs at issue. The signs indicate they were paid by Citizens for Good Government. The respondent accepted the signs and used them to support her campaign for justice of the peace. Thus, the third-party’s expenditures for the signs constituted an in-kind contribution, which the respondent was required to disclose on the campaign finance report covering the period in which she accepted the contribution. The signs have been on display since at least October 2009. Thus, the respondent accepted campaign contributions or made or authorized campaign expenditures at a time when she did not have a campaign treasurer appointment in effect. Therefore, there is credible evidence that the respondent violated section 252.001 of the Election Code with regard to timely filing a campaign treasurer appointment, and section 253.031 of the Election Code with regard to accepting campaign contributions or making or authorizing campaign expenditures at a time when no campaign treasurer appointment was in effect.

Use of Office Title

9. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
10. As a general rule, it would not be a violation of section 255.006 of the Election Code for a person who is currently a judge to use the title “judge” in political advertising or campaign

communications. Ethics Advisory Opinion No. 171 (1993). It would be a violation of section 255.006 of the Election Code, however, for a judge running for a judicial office other than the one he or she currently holds to enter into an agreement to print, publish, or broadcast political advertising that suggests the judge is an incumbent in the office sought, or to represent in a campaign communication that he or she holds a judicial office other than the one he or she actually holds. *Id.*

11. At the time the signs at issue were first displayed, the respondent was a municipal judge. The respondent was running for the office of justice of the peace. The signs did not identify the office sought and, on their face, did not suggest that the respondent was a justice of the peace. Thus, at the time the complaint was filed the respondent did not represent in a campaign communication that she held a public office that she did not hold at the time the representation was made. Therefore, there is credible evidence that the respondent did not violate section 255.006 of the Election Code with regard to the misleading use of office title.

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 candidate shall appoint a campaign treasurer. The respondent also acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. 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 \$300 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-2910225.

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

Hilda G. Caceres, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director