

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DOUGLAS C. REEVES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100258 AND SC-3100259

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 12, 2010, to consider sworn complaints SC-3100258 and SC-3100259. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.061, and 254.064 of the Election Code, and credible evidence of technical or *de minimis* violations of sections 254.036 and 254.063 of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent failed to include required information on campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for Collin County Justice of the Peace, Precinct 4 in a primary election held on March 2, 2010.
2. Sworn complaint SC-3100258 alleged that the respondent:
 - Failed to timely file his 30-day pre-election report for the March 2010 election;
 - Failed to cover the correct reporting period on his 30-day pre-election report for the March 2010 election;
 - Failed to disclose the correct report type on his 30-day pre-election report for the March 2010 election;
 - Failed to disclose political contributions on his 30-day pre-election report for the March 2010 election;

- Failed to disclose the address and purpose of multiple political expenditures on his 30-day pre-election report for the March 2010 election;
 - Failed to disclose the address of his campaign treasurer on his 30-day pre-election report for the March 2010 election; and
 - Failed to properly notarize the affidavit on his 30-day pre-election report for the March 2010 election.
3. Sworn complaint SC-3100259 alleged that the respondent:
- Failed to cover the correct reporting period on his January 2010 semiannual report;
 - Failed to disclose the address of his campaign treasurer on his January 2010 semiannual report;
 - Failed to properly itemize political contributions on his January 2010 semiannual report; and
 - Failed to disclose total political expenditures on his January 2010 semiannual report.
4. Collin County elections records show that the respondent filed his appointment of a campaign treasurer on January 5, 2010.

January 2010 Semiannual Report

5. On January 15, 2010, the respondent filed a report marked as a January semiannual report covering from January 4, 2010, through March 2, 2010.
6. The report disclosed on its totals page:
- A blank space for total political contributions of \$50 or less;
 - \$365 in total political contributions;
 - A blank space for total political expenditures of \$50 or less;
 - A blank space for total political expenditures;
 - A blank space for total political contributions maintained; and
 - A blank space for outstanding loans.
7. The report did not itemize any political contributions but did itemize two political expenditures on Schedule F as follows:

Date	Payee Name	Amount	Purpose
1/4/2010	Collin County Republican Party	\$1,000	[Left Blank]
12/26/2009	Kinkos/Fed Ex	\$75.47	Cards

8. The report also itemized a \$1,000 loan from the respondent dated January 2, 2010. The report did not disclose the campaign treasurer's address.

30-Day Pre-Election Report

9. On February 3, 2010, the respondent filed a campaign finance report in connection with the March 2010 election. The report disclosed the period covered as January 7, 2010, through February 2, 2010. The report was marked as a January semiannual report and did not disclose the address of the respondent's campaign treasurer. The due date for the 30-day pre-election report for the March 2010 election was February 1, 2010.
10. The report disclosed on its totals page:
 - \$49 in total political contributions of \$50 or less;
 - \$174 in total political contributions;
 - A blank space for total political expenditures of \$50 or less;
 - \$5,163.48 in total political expenditures;
 - A blank space for total political contributions maintained; and
 - A blank space for outstanding loans.
11. The report did not include a Schedule A (used to itemize political contributions), but did include two pages of Schedule F that itemized seven political expenditures totaling approximately \$5,113. Each expenditure was dated January 29, or February 2, 2010. Three out of the seven itemized expenditures did not contain a complete address. None of the expenditures disclosed a purpose of payment.
12. The affidavit on Cover Sheet Page 2 of the report did not contain a notary stamp or seal, and disclosed that the respondent administered the oath.

Corrected 30-day Pre-Election Report

13. On June 30, 2010, the respondent filed a corrected 30-day pre-election report for the March 2010 election that disclosed the period covered as January 4, 2010, through January 21, 2010.
14. The report disclosed on its totals page:
 - \$49 in total political contributions of \$50 or less;
 - \$149 in total political contributions;
 - A blank space for total political expenditures of \$50 or less;
 - \$1,260 in total political expenditures;
 - \$0 in total political contributions maintained; and
 - \$1,111.68 for outstanding loans.

15. The report also itemized five political contributions totaling approximately \$100, and four political expenditures totaling approximately \$260.

8-Day Pre-Election Report

16. On February 22, 2010, the respondent filed an 8-day pre-election report for the March 2010 election that disclosed the period covered as January 22, 2010, through February 20, 2010.
17. The report disclosed on its totals page:
 - \$0 in total political contributions of \$50 or less;
 - \$0 in total political contributions;
 - \$0 in total political expenditures of \$50 or less;
 - \$7,368.70 in total political expenditures;
 - \$0 in total political contributions maintained; and
 - “N/A” for outstanding loans.
18. All expenditures disclosed on the respondent’s 30-day report for the March 2010 election were apparently reported a second time on this report because they fell within the period covered by the report.

Corrected 8-day Pre-Election Report

19. On June 30, 2010, the respondent filed a corrected 8-day pre-election report for the March 2010 election that disclosed the period covered as January 22, 2010, through February 20, 2010.
20. The report disclosed on its totals page:
 - \$0 in total political contributions of \$50 or less;
 - \$500 in total political contributions;
 - \$0 in total political expenditures of \$50 or less;
 - \$7,851.64 in total political expenditures;
 - \$0 in total political contributions maintained; and
 - \$8,823.40 in outstanding loans.

IV. Findings and Conclusions of Law

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

1. A “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. ELEC. CODE § 251.001(1). “Affirmative action” includes, but is not limited to, the soliciting or accepting of a campaign contribution or the making of a campaign expenditure. ELEC. CODE § 251.001(1)(g).
2. A “political expenditure” means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001(10).
 3. Making a campaign expenditure is one example of an affirmative action for purposes of determining whether an individual is a candidate. The respondent’s January 2010 semiannual report disclosed that the respondent made a \$75.47 political expenditure on December 26, 2009, to “Kinkos/Fed Ex” for “cards.” The respondent was not an officeholder at that time. The political expenditure appears to have been a campaign expenditure. Therefore, on December 26, 2009, the respondent was a candidate.

Campaign Finance Report - Timely Filing/Period Covered

4. A candidate is required to file two reports for each year. 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, as applicable, and continuing through June 30. ELEC. CODE § 254.063(b). 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, as applicable, and continuing through December 31. ELEC. CODE § 254.063(c).
5. Sworn complaint SC-3100259 alleged that the respondent failed to cover the correct period on his January 2010 semiannual report.
6. On January 15, 2010, the respondent filed a January 2010 semiannual report. The respondent was a candidate on December 26, 2009, and therefore was required to file a January 2010 semiannual report by January 15, 2010. The report was required to cover through December 31, 2009. The cover sheet for the respondent’s January 2010 report disclosed that it covered from January 4, 2010, through March 2, 2010. Although the report did disclose a political expenditure made on December 26, 2009, the cover page of the report failed to disclose the correct period for the January 2010 semiannual report. In context, the error was minor. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.063(c) of the Election Code.
7. 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, and continuing through the 40th day before election day. ELEC. CODE § 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. ELEC. CODE § 254.064(c).

8. Sworn complaint SC-3100258 alleged that the respondent failed to timely file his 30-day pre-election report for the March 2, 2010, election. The complaint also alleged that the respondent failed to cover the correct period on that report.
9. The respondent filed a campaign finance report marked as a January semiannual report on February 3, 2010, that disclosed the period covered as January 7, 2010, through February 2, 2010. The proper reporting period for the 30-day pre-election report for the March 2, 2010, election was January 1, 2010, through January 21, 2010. The due date for that report was February 1, 2010. Due to the fact that the respondent had already filed a January 2010 semiannual report and the proximity of the filing to the due date for the 30-day pre-election report for the March 2, 2010, election the evidence indicates that the report was intended to be the 30-day pre-election report. The respondent filed the report two days after the due date. The respondent did not cover the correct reporting period date for the 30-day pre-election report for the March 2, 2010, election. Therefore, there is credible evidence of violations of section 254.064(b) of the Election Code.

Use of a Format Prescribed by the Commission

10. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a). The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
11. Sworn complaint SC-3100258 alleged that the respondent failed to disclose the correct report type on his 30-day pre-election report for the March 2, 2010, election. The report was required to be filed in a format prescribed by the commission. The respondent filed a campaign finance report marked as a January semiannual report on February 3, 2010, covering from January 7, 2010, through February 2, 2010. The respondent used the forms prescribed by the commission for that report. However, the evidence indicates that it was a 30-day pre-election report and not a January semiannual report. Therefore, it appears that the respondent checked the wrong box on the coversheet that indicates "report type." Therefore, there is credible evidence of a *de minimis* violation of section 254.036(a) of the Election Code.

Disclosing the Address of a Campaign Treasurer

12. Each campaign finance report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061(2).
13. The complaints alleged that the respondent failed to disclose the address of his campaign treasurer on his January 2010 semiannual report and 30-day pre-election report for the March 2010 election, respectively. The respondent did not disclose the address of his campaign treasurer on those reports. Therefore, there is credible evidence of violations of section 254.061(2) of the Election Code.

Requirement to Include an Affidavit in a Campaign Finance Report

14. Each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." ELEC. CODE § 254.036(h).
15. An affidavit is a voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as a notary public. Black's Law Dictionary, 8th ed., 1999.
16. Sworn complaint SC-3100258 alleged that the respondent failed to include a properly notarized affidavit with his 30-day pre-election report for the March 2, 2010, election. The Election Code does not specifically define "affidavit," but the generally accepted definition includes the requirement that the facts being sworn to be done so before an officer qualified to administer an oath. The affidavit accompanying the respondent's 30-day pre-election report for the March 2, 2010, election was not properly executed by the respondent. It did not contain a notary stamp or seal, and disclosed that the respondent administered the oath. Nevertheless, section 254.036 of the Election Code also provides that a campaign finance report is considered to be under oath even if the affidavit is defective. Therefore, with regard to the respondent's 30-day pre-election report for the March 2010 election, there is credible evidence of a technical violation of section 254.036(h) of the Election Code.

Reporting of Political Contributions and Expenditures

17. Each campaign finance 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 under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1). The report must also include the amount of

- political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3). Each report must also include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5). Each report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
18. Sworn complaint SC-3100259 alleged that the respondent failed to disclose political contributions on his January 2010 semiannual report. On January 15, 2010, the respondent filed a January 2010 semiannual report. The respondent was a candidate on December 26, 2009, and therefore was required to file a January 2010 semiannual report by January 15, 2010. The report was required to cover through December 31, 2009.
 19. The cover sheet for the respondent's January 2010 report disclosed that it covered from January 4, 2010, through March 2, 2010. The report also disclosed a blank space for total political contributions of \$50 or less and \$365 in total political contributions. The report did not itemize any political contributions on the report. It is unclear whether the \$365 in political contributions that the respondent disclosed in his totals were accepted prior to December 31, 2009, the last day that should have been covered by the respondent's January 2010 semiannual report.
 20. The commission asked the respondent to clarify his political contributions and expenditures. The respondent filed corrected reports in response to that request. However, the respondent did not file a correction or additional report that covered the correct period of the January 2010 semiannual report (through December 31, 2009). It is unclear whether the \$365 in political contributions disclosed on the respondent's January 2010 semiannual report are reflected in the periods covered by the newly corrected reports. Therefore, with regard to the respondent's January 2010 semiannual report, there is insufficient evidence of a violation of section 254.031(a)(1) of the Election Code.
 21. Sworn complaint SC-3100259 also alleged that the respondent failed to disclose the total amount of political expenditures on his January 2010 semiannual report. Schedule F of the report disclosed two political expenditures totaling approximately \$1,080. The respondent left the space for total political expenditures blank on his January 2010 semiannual report. Therefore, with regard to the respondent's January 2010 semiannual report, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.
 22. Sworn complaint SC-3100258 alleged that the respondent failed to disclose political contributions on his 30-day pre-election report for the March 2010 election. The cover sheet for that report disclosed \$49 in political contributions of \$50 or less and \$174 in

total political contributions. The report did not include a Schedule A (used to detail political contributions.) The respondent's corrected 30-day report itemized approximately \$100 in political contributions that were not itemized on the previously filed report. A report must provide detailed information for political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report. The respondent failed to do so. Therefore, with regard to the respondent's 30-day pre-election report for the March 2010 election, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

23. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61(a).
24. Sworn complaint SC-3100258 also alleged that the respondent failed to disclose the addresses and purposes of multiple political expenditures on his 30-day pre-election report for the March 2010 election. That report disclosed seven political expenditures totaling approximately \$5,113. Three out of the seven itemized expenditures did not contain a complete address. None of the expenditures disclosed a purpose of payment. The proper reporting period for that report was January 1, 2010, through January 21, 2010. Each expenditure was dated either January 29 or February 2, 2010, during the period covered by respondent's 8-day pre-election report for the March 2010 election. Those expenditures were also reported on the respondent's 8-day pre-election report for the March 2010 election. Thus the expenditures were not required to be disclosed on the respondent's 30-day pre-election report for the March 2010 election. Therefore, with regard to the respondent's 30-day pre-election report for the March 2010 election, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

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 these sworn complaints.
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 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, as applicable, and continuing through June 30. 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, as applicable, and continuing through December 31.

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 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, and continuing through the 40th day before election day.

The respondent also acknowledges that each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission.

The respondent also acknowledges that each campaign finance report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number.

The respondent also acknowledges that each campaign finance report that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

The respondent also acknowledges that each campaign finance 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 under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. Each report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period.

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 \$200 civil penalty for the violations 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-3100258 and SC-3100259.

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

Douglas C. Reeves, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director