

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRANCIS TRUCHARD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-981198

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 12, 1998, and voted to accept jurisdiction of Sworn Complaint SC-981198 filed against Francis Truchard, Respondent. The commission met again on February 12, 1999, to consider Sworn Complaint SC-981198. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent violated the Election Code by filing late reports, including a July semiannual report, a 30-day before election report, and an 8-day before election report.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was an opposed candidate in the November 1998 general election.
2. The respondent filed a campaign treasurer appointment on December 31, 1997. The respondent's semiannual report was due on July 15, 1998. The 30-day before election report was due on October 5, 1998, and the 8-day before election report was due on October 26, 1998.
3. The respondent's campaign finance reports were stamped "received October 27, 1998," by the Colorado County Clerk's Office. The reports disclose contributions totaling \$250 and expenditures totaling \$970.
4. In his response to this complaint, the respondent submitted a sworn response acknowledging that the semiannual, 30-day before election, and 8-day before election reports were not timely filed. The respondent stated that his failure to timely file the required reports was

unintentional and due to a lack of time and the unavailability of the county clerk to assist him.

IV. Findings and Conclusions of Law

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

1. A candidate is required to file a semiannual report by January 15 and July 15 of each year. Section 254.063, Election Code.
2. An opposed candidate is required to file additional reports not later than the 30th day and 8th day before an election. Section 254.064, Election Code.
3. The respondent's reports, due July 15, October 5, and October 26 respectively, were filed with the County Clerk's Office on October 27, 1998, as evidenced by the County Clerk's date stamp and the respondent's sworn statement.
4. The required reports were filed after their respective deadlines and are therefore untimely.

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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Section IV, Paragraph 4.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-981198;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than March 12, 1999; and
4. that the executive director shall promptly refer SC-981198 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-981198 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 199__.

Francis Truchard, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director