

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DEBORAH NEKHOM HARRIS,

RESPONDENT

§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-220216

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220216 filed against Deborah Nekhom Harris, Respondent. The commission met again on August 16, 2002, to consider Sworn Complaint SC-220216. 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 Sections 254.031 and 254.0611(a)(1), Election Code, laws 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, a candidate for statutory county court judge, failed to disclose her total unitemized political contributions of \$50 or less, her total unitemized political expenditures of \$50 or less, her total political contributions and expenditures, and her total political contributions maintained as of the last day of the reporting period on her 30-day before election report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for county criminal court judge in the March 2002 Republican primary election.
2. She timely filed a 30-day before election report on February 11, 2002. Her report disclosed itemized political contributions on schedule A(J) and itemized political expenditures made from personal funds on schedule G, but it did not disclose any contribution or expenditure totals on the cover sheet, page 2.

3. The respondent swore as follows in the affidavit that she filed in response to the complaint:

As a judicial candidate I was aware of the requirement to file campaign finance reports. The report in question was due to be filed at the courthouse on 1/31/02 by 5:00 pm. I was in court until late that day, and ran very short of time to get the filing done timely. I filled out the form and forgot to move the column totals to page 2, and I even forgot to sign the document. The elections office clerk had to call me to tell me to come sign the document. Since it was already filed, I didn't feel I could change it all [sic] all. I had listed in the report all of my expenditures, as well as contributions, to the penny. I had not removed any money at all from the contributions, as can be seen by the information in the next filing done in March. I was careless because I was in a hurry. I am enclosing a copy of my amended cover sheet and correction affidavit.

4. The actual due date for the respondent's 30-day before election report was February 11, 2002, although the last day of the period covered by that report was January 31, 2002.
5. The respondent submitted with the affidavit she filed in response to this complaint a copy of her correction affidavit and corrected cover sheet, page 2, for her 30-day before election report. In her correction affidavit, she swore that she "inadvertently did not carry over totals on page 2 due to being late getting it filed, and did not change it after filing." On her corrected cover sheet, page 2, she disclosed total political contributions in the amount of \$668.15, total political expenditures in the amount of \$4,332.74, and total political contributions maintained as of the last day of the reporting period in the amount of \$668.15. The political contribution and political expenditure totals that the respondent disclosed on her corrected cover sheet, page 2, equaled the respective sums of the political contributions and political expenditures made from personal funds that the respondent itemized and disclosed on schedules A(J) and G to her original report.

IV. Findings and Conclusions of Law

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

1. A candidate's campaign finance reports must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. Section 254.031(6), Election Code. It must also contain 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. Section 254.031(5), Election Code. A judicial candidate's campaign finance reports must additionally include the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. Section 254.0611(a)(1), Election Code.
2. The respondent's 30-day before election report did not disclose the foregoing political contribution and political expenditure totals, although it did disclose all of the particular

political contributions and the particular political expenditures that made up those totals. The respondent's corrected report, which was filed after this complaint was filed with the commission, properly disclosed the totals. Because the respondent itemized all of her political contributions and expenditures of \$50 or less on her original report, she was not required to enter the total amounts of the political contributions and expenditures of \$50 or less that she accepted and made during the reporting period. She was, however, required to enter the total amounts of all of the political contributions that she accepted and all of the political expenditures that she made during the reporting period, and to disclose the amount of political contributions that she maintained as of the last day of the reporting period.

3. Thus there is credible evidence that the respondent violated Sections 254.031 and 254.0611(a)(1), Election Code.

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. The respondent acknowledges that a judicial candidate's campaign finance reports must include the total amounts of all of the political contributions that the candidate accepted and all of the political expenditures that the candidate made during the reporting period, and that it must disclose the amount of political contributions that the candidate maintained as of the last day of the reporting period. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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, Paragraphs 2 and 3, 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, Government Code, and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, 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 \$100 civil penalty for the violation described under Section IV, Paragraphs 2 and 3.

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-220216;
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 \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 13, 2002; and
4. that the executive director shall promptly refer SC-220216 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-220216 as proposed in this ORDER and AGREED RESOLUTION.

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

Deborah Nekhom Harris, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director