

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES FANTROY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220446

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220446 filed against James Fantroy. The commission met again on May 9, 2003, to consider Sworn Complaint SC-220446. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of six violations of section 254.031 of the Election Code, 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 failed to disclose various campaign contributions and campaign expenditures on his campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The complainant was a candidate for a seat on the Dallas City Council in a special election held on May 6, 2000. She lost that election and afterward filed a complaint against the respondent, who was her opponent in the election, alleging that he failed to disclose all of his political contributions and expenditures.
2. The complainant also filed a lawsuit in which she sought to recover damages in twice the amount of the expenditures and contributions that she alleges the respondent failed to report. The complaint and the lawsuit contain essentially the same allegations. Despite the complainant's extensive discovery in the lawsuit—which consisted of written interrogatories and requests for production of documents, among other things—the lawsuit was terminated by a final summary judgment in favor of the respondent.
3. The complainant submitted approximately 300 pages of photocopied materials with respect to her complaint against the respondent. Most of these materials appear to have been

furnished to the complainant in response to discovery that she obtained in her lawsuit. She did not state, however, which materials pertained to her complaint against the respondent. Therefore, the materials were returned to the complainant with a cover letter explaining in detail how she could resubmit them and relate them to each of her pending complaints.

4. The complainant resubmitted a seven-page cover letter and approximately ninety-two pages of photocopied materials as evidence in this complaint.
5. The complainant alleges that the respondent failed to disclose twenty-one campaign expenditures and four campaign contributions on his campaign finance reports. The alleged contributions and expenditures are listed below, grouped by report. The complainant states that she estimated some of the expenditures based on “actual costs or estimates of similar work orders from oral statements given by vendors, suppliers, and service contractors.”
6. The respondent did not respond to the specific allegations. Rather, he responded to the allegations in general, as follows:

I have no idea what [the complainant] keep[s] complaining about. I have filed all the papers with the City of Dallas, City Secretary Office, and with the Texas Ethics Commission. I wish somebody would tell me what I have done wrong because, best of knowledge I have not. [The complainant] also filed a complaint in the Dallas County District Court, case number 02-03135-H which was dismissed. I’m sending a copy of the court order. Sorry it took so long to answer this complaint. We been [*sic*] in a budget crisis.

His response does not address the specific allegations in this complaint.

30-Day Pre-election Report

(covering the period beginning on January 1, 2000, and ending on March 27, 2000)

7. The following expenditures were cited in the complaint as not having been disclosed on the respondent’s 30-day pre-election report:
 - (1) “walk phone list for a total of \$400 [estimated] to Ed Valentine . . . Dated 3-8-00”
 - (2) “\$1600 to Lowes for stakes for yard signs [date unspecified]”
8. As to (1): The respondent disclosed an expenditure in the amount of \$757.75 made on March 10, 2000, to Ed Valentine for “Labels, Walk/phone list” on his 30-day pre-election report. There is no evidence that the respondent purchased more than one “walk phone list” from Ed Valentine in the period covered by his 30-day pre-election report. Thus, the expenditure disclosed on the respondent’s 30-day pre-election report appears to be the same expenditure alleged in the complaint. Therefore, there is credible evidence that the respondent did not fail to disclose the alleged expenditure on his 30-day pre-election report.
9. As to (2): The complainant alleges that the maintenance manager for an apartment house the respondent owns and manages stated that he used an apartment house credit card to buy

approximately \$800 worth of stakes for the respondent's campaign on two occasions. The complainant did not provide any evidence of the statement she alleges the maintenance manager made, and she did not give the name, address, or phone number of the maintenance manager in her complaint.

The respondent's campaign finance reports filed in 2000 and 2001 disclose numerous expenditures that the respondent made to Lowes. But the respondent's reports do not disclose that he made any expenditure specifically for stakes in connection with the May 6, 2000, special election; and they do not disclose that he accepted any in-kind contribution of stakes in connection with that election. However, there is no reason to believe that the respondent's reports should have disclosed such an expenditure or an in-kind contribution because, other than the complainant's assertion that an unnamed source said he made the expenditures, there is no evidence that the expenditures were ever made or that the contribution was ever accepted in the period covered by the respondent's 30-day pre-election report. Therefore, there is credible evidence that the respondent did not fail to disclose alleged expenditures on his 30-day pre-election report.

10. The following contribution was cited in the complaint as not having been disclosed on the respondent's 30-day pre-election report:
 - (1) "\$10,000 used to purchase \$10,000 in money orders used for yard signs and office space in Feb 2000 [contributor unspecified]"
11. As to (1): There is no evidence to indicate that the respondent accepted undisclosed political contributions in the amount of \$10,000, that the respondent used undisclosed contributions to purchase money orders, or that the respondent used \$10,000 worth of money orders to pay for office space and yard signs in the period covered by his 30-day pre-election report.

The complainant included photocopies of two money orders that the respondent purchased in February 2000, and a photocopy of a lease agreement for a campaign office that the respondent entered into in February 2000. The lease agreement fixes the minimum guaranteed rental on the respondent's campaign office at \$1,500 for the months of March, April, and May 2000. The two money orders are made payable to the leasing company in the amounts of \$500 and \$1,000.

The respondent disclosed on schedule F of his 30-day pre-election report that on February 15, 2000, he made two expenditures to the leasing company—one in the amount of \$1,500 and another in the amount of \$500—and he disclosed on schedule E of that report that he made a \$25,000 "loan" to his campaign. The loan apparently represented political expenditures that the respondent made from his personal funds. Therefore, it is not clear whether the money orders were purchased with political contributions or with the respondent's personal funds. (The complainant asserts that the \$25,000 loan actually represents political expenditures that were made on behalf of the respondent by two businesses—Trendsetters Staffing and Pacesetters Staffing—but she submitted no evidence to support that assertion.)

The evidence submitted by the complainant indicates that the money orders were given to the leasing company in payment or partial payment of the minimum guaranteed rental or other charges related to the respondent's lease of his campaign office. There is no evidence that the respondent purchased more than \$1,500 worth of money orders or that the respondent purchased money orders that he used to pay for yard signs in connection with the May 6, 2000, special election.

8-Day Pre-election Report

(covering the period beginning on March 28, 2000, and ending on April 26, 2000)

12. The following expenditures were cited in the complaint as not having been disclosed on the respondent's 8-day pre-election report:

- (1) "hotel room for fundraiser for \$750.00 on 4-7-0 [*sic*] [payee unspecified]"
- (2) "\$4,442. [*sic*] for printing of Mailer #2 dated 4-21-00 [payee unspecified]"
- (3) "\$300 [estimated] for Labels for Mailer #2 [payee unspecified]"
- (4) "\$892. [*sic*] [estimated] for printing Mailer #3 4-20-00 [payee unspecified]"
- (5) "apprx. \$300.00 [estimated] for Labels for Mailer #3 [date and payee unspecified]"
- (6) "\$150.00 for services to Eller Media 4-19-00"
- (7) "\$754. [*sic*] [estimated] for postage Mailer #3b dated 4-26-00 [payee unspecified]"
- (8) "\$400 [estimated] for printing Mailer #3b dated 4-26-00 [payee unspecified]"

13. As to (1): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$750 that he made on April 7, 2000, for a hotel room for a fundraiser on his 8-day pre-election report. The complainant submitted an undated "event order" from the Dallas Grand Hotel for an April 7, 2000, reception, listing "H.J. Johnson—Dallas Progressive Council" as "CONTACT/HOST." She also submitted a banquet check for the reception signed by "Dr. H. J. Johnson" on April 2, 2000, and an invoice for food and beverages for the reception that the Hotel issued on April 11, 2000, to the Dallas Progressive Council, both in the amount of \$750. The event order, the banquet check, and the invoice all appear to be related to the same \$750 expenditure for food and beverages for the April 7, 2000, reception. There appears to have been no separate charge for the room.

The respondent's 8-day pre-election report does not disclose that the respondent accepted food and beverages for the reception as an in-kind contribution from H. J. Johnson or from the Dallas Progressive Council. Therefore, there is credible evidence that on April 7, 2000, H. J. Johnson or the Dallas Progressive Council made an expenditure for food and beverages for the respondent's reception at the Dallas Grand Hotel in connection with the May 6, 2000, special election, and credible evidence that the respondent accepted the food and beverages for that reception as an in-kind contribution from the contributor and failed to disclose the contribution on his 8-day pre-election report.

14. As to (2): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$4,442 that he made on April 21, 2000, for printing "Mailer #2" on his 8-day pre-

election report. The complainant submitted an invoice dated April 17, 2000, for printing 10,000 copies of a political flier issued by the Color Laser Institute to the respondent's campaign. The amount printed on that invoice was \$4,442, but the printed amount was struck through and the amount of \$2,384.17 was handwritten below it. The handwritten amount was also struck through, and no amount was printed or written below it. It is not clear who made the alterations or why they were made. It is not clear whether the political flier described in the invoice was "Mailer #2" described in the complaint. And it is not clear which amount represented the correct amount of the invoice, although \$4,442 could represent the stated quantity of 10,000 times the stated rate of \$00.0439.

The respondent's 8-day pre-election report does not disclose an expenditure made to Color Laser Institute in either of the two amounts listed on the invoice. The respondent does not deny that he made such an expenditure. The invoice appears to have been one of several invoices that the custodian of the records of the Color Laser Institute furnished to the complainant in response to her discovery in the lawsuit she filed against the respondent. The custodian swears as follows in the affidavit that accompanies those records:

I am the person in charge of the records of Color Laser. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that Color Laser Institute provided to James L. Fantroy Campaign or agent on 3/00 thru 5/00 time period. The attached records are part of the affidavit.

The attached records are kept by me in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by Kelly Anderson or an employee or representative of Color Laser, who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time the service was provided. The records are the original or exact duplicates of the original.

Thus, there is credible evidence that on April 17, 2000, the respondent made an expenditure to Color Laser Institute for 10,000 copies of a political flier, and credible evidence that he did not disclose that expenditure on his 8-day pre-election report.

15. As to (3) and (5): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$300 (estimated) that he made for labels for "Mailer #2" and did not disclose another expenditure in the amount of \$300 (estimated) that he made for labels for "Mailer #3" on his 8-day pre-election report. She states that, according to "oral testimony" from the vendors (whom she did not identify), Tony Garrett, an individual who supported her opponent, picked up the tab. But there is no record of any such testimony in the evidence the complainant submitted. Moreover, there is nothing to indicate which mailer is "Mailer #2" and which is "Mailer #3."

The respondent's campaign finance reports filed in 2000 and 2001 include a number of expenditures that the respondent made for "printing," but include only one expenditure that he made specifically for labels. That expenditure was made on March 10, 2000, to Ed

Valentine, for “printing lables [*sic*],” and according to the complainant, the expenditure was made for labels for “Mailer #1.” There is no evidence, however, that the respondent ever made any expenditure specifically for labels for other mailers, and the respondent’s expenditure to Ed Valentine and others for printing could have included the cost of labels for more than one mailer.

The complainant submitted a letter dated August 12, 2000, from Tony Garrett, the individual who supported the respondent. The letter states that Tony Garrett paid for “[p]ostage and mailing service” in the amount of \$2,036.55 and for printing in the amount of \$809.71. The letter further states:

I know you reported an overall debt that included the amount due to me. I don’t know if you are supposed to break those amounts down to itemize what each charge was for. I looked at it as a total amount due for the efforts I was responsible for and that was what I told you about.

....

Please understand that this is not pressing you for payment.

Therefore, Tony Garrett’s expenditures for mailing service and printing costs could have included the cost of labels for mailers.

The complainant furnished a copy of Tony Garrett’s answers to some of her interrogatories in her lawsuit. He swore in one of his answers that the respondent “verbally agreed to reimburse [him] for expenses advances on behalf of the [respondent’s] campaign” and that he “subcontracted” with Graphics Management and Summers Mailing in connection with the respondent’s campaign. Therefore, Tony Garrett’s letter and answers to interrogatories are credible evidence that he made loans to the respondent’s campaign in the amounts of \$2,036.55 and \$809.71, that he informed the respondent of those loans, and that the respondent agreed to repay the loans. The respondent’s campaign finance reports filed in 2000 and 2001 do not, however, disclose that the respondent accepted any such loans from Tony Garrett.

Therefore, there is credible evidence that the respondent did not disclose loans in the amounts of \$2,036.55 and \$809.71 that he accepted from Tony Garrett, an individual who supported him in connection with the May 6, 2000, special election, and there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #2” or that he failed to disclose the alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #3” in the period covered by his 8-day pre-election report.

16. As to (4): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$892 (estimated) that he made on April 20, 2000, for printing “Mailer #3” on his 8-day pre-election report. The complainant submitted copies of invoices from the Color Laser Institute for printing materials related to the respondent’s campaign as well as copies of

certain campaign materials. However, none of those invoices is dated April 20, 2000, and none is in an amount that equals or approximates the amount of the alleged expenditure for “Mailer #3.” Further, the complainant did not describe the contents of “Mailer #3” or indicate which, if any, of the copies of the campaign materials she submitted is “Mailer #3.” Therefore, there is no evidence that the respondent failed to disclose an alleged expenditure in the amount of \$892 that he allegedly made for printing “Mailer #3” in the period covered by his 8-day pre-election report.

17. As to (6): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$150 that he made to Eller Media for “services” on his 8-day pre-election report. Among the materials that were returned to the complainant for clarification but never resubmitted is a photocopy of an invoice in the amount of \$150 from Eller Media to “Lee Fantroy” dated April 19, 2000. The invoice states that it is for a “Charge to post snipes [*sic*] on 10 8-sheet boards,” and it includes an approval by an individual who signed for the Profile Group. Also among those materials is a photocopy of a check drawn on an account of the Profile Group and made payable to Eller Media Company in the amount of \$150. The date of the check is illegible due to the poor quality of the photocopy.

The respondent’s January 15 report discloses that he made an expenditure on an undisclosed date to “The Profile Group” in the amount of \$150 for billboards and signs. It is not clear whether this expenditure is the expenditure represented by the April 19, 2000, invoice, although it appears that it is a different expenditure because it was disclosed on the January 15 report. It is clear, however, that the respondent did not disclose the date of this expenditure. Therefore, there is credible evidence that the respondent did not disclose the date of the \$150 expenditure that he made to the Profile Group and disclosed on his January 15 report filed in 2001.

18. As to (7): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$754 (estimated) that he made on April 26, 2000, for postage for “Mailer 3b” to an unspecified vendor. The complainant submitted copies of certain campaign materials, but there is nothing to indicate the contents of “Mailer 3b” or to indicate which, if any, of the materials is “Mailer 3b.” Further, the complainant did not provide an invoice or furnish other evidence of the alleged expenditure. The respondent’s 30-day pre-election report discloses that he made an expenditure in the amount of \$1,650 on April 18, 2000, to U.S.P.S. (the United States Postal Service) for stamps. The stamps that the respondent purchased on that date could have been used for postage for “Mailer 3b.” Therefore, there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$754 (estimated) that he allegedly made on April 26, 2000, for postage for “Mailer 3b” on his 8-day pre-election report.
19. As to (8): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$400 (estimated) that he made on April 26, 2000, for printing “Mailer #3b” on his 8-day pre-election report. The complainant submitted copies of invoices from the Color Laser Institute for printing materials related to the respondent’s campaign as well as copies of certain campaign materials. However, none of those invoices is dated April 26, 2000, or in an amount that equals or approximates the amount of the alleged expenditure for “Mailer

#3b,” and there is nothing to indicate the contents of “Mailer #3b” or to indicate which, if any, of the copies of the campaign materials she submitted is “Mailer #3b.” Therefore, there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$400 that he allegedly made for printing “Mailer #3b” in the period covered by his 8-day pre-election report.

20. The following contribution was cited in the complaint as not having been disclosed on the respondent’s 8-day pre-election report:

- (1) “in kind contribution of \$800 [estimated] for office space and telephone usage to Black State Employees Association of Texas for phone callers [date unspecified]”

As to (1): This allegation is essentially the same allegation that the complainant made in sworn complaint SC-200850 filed on August 4, 2000. In response to that allegation, the respondent swore in SC-200850 that his telephone lines were located in his campaign offices (and by implication not in the offices of the state employees association). The commission found that there was credible evidence that the respondent did not fail to report the alleged contribution. There is nothing in the evidence to support this allegation or to indicate that the commission should revisit its finding in sworn complaint SC-200850.

July Semiannual Report

(covering the period beginning on April 27, 2000, and ending on June 30, 2000)

21. The following expenditures were cited in the complaint as not having been disclosed on the respondent’s July semiannual report:

- (1) “\$904.43 [estimated] for printing Mailer #4 dated 5-00 [sic] [payee unspecified]”
- (2) “\$300 [estimated] for Labels for Mailer #4 5-2-00 [payee unspecified]”
- (3) “\$904 [estimated] for printing Mailer #5 dated 5-3-00 [payee unspecified]”
- (4) “\$300 [estimated] for Labels for Mailer #5 dated 5-3-00 [payee unspecified]”
- (5) “\$1000 [estimated] for services to CP Henry dba Graphics Management [date unspecified]”
- (6) “\$1500 [estimated] for services to ACORN For phone bank and/or other campaign services [date unspecified]”
- (7) “\$400.00 for ads to KHAVN radio 4-28-00”
- (8) “\$330 for Stamps to US Postage 5-2-00”
- (9) “\$2,622.50 for services to State Rep. Terri Hodge dba Gladys Hodge [date unspecified]. There are additional expenses here not reported and not known of exact amount at this time. See statements from [respondent] in DMN article. [sic] \$8,000.00 was paid to Hodge”
- (10) “\$6000 [estimated] for services to Don Johnson dba Welcome House for election day card pushers and walkers” [date unspecified]

22. As to (1): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$904.43 (estimated) that he made in May 2000 for printing “Mailer #4” on his

July semiannual report. The complainant submitted invoices from the Color Laser Institute for printing materials related to the respondent's campaign as well as copies of certain campaign materials. However, none of those invoices is dated in May 2000, or is in an amount that equals or approximates the amount of the alleged expenditure for "Mailer #4," and there is nothing to indicate the contents of "Mailer #4" or to indicate which, if any, of the copies of the campaign materials she submitted is "Mailer #4." Therefore, there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$904.43 that he allegedly made in May 2000 for printing "Mailer #4" on his July 15 report.

23. As to (2) and (4): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$300 (estimated) that he made for labels for "Mailer #4" and did not disclose another expenditure in the amount of \$300 (estimated) that he made for labels for "Mailer #5" on his July 15 report. She states that, according to "oral testimony" from the vendors (whom she did not identify), Tony Garrett, an individual who supported the respondent, picked up the tab. But there is no record of any such testimony in the evidence the complainant submitted. Moreover, there is nothing to indicate which mailer is "Mailer #4" and which is "Mailer #5."

The respondent's campaign finance reports filed in 2000 and 2001 include a number of expenditures that the respondent made for "printing," but include only one expenditure that he made specifically for "labels." That expenditure was made on March 10, 2000, to Ed Valentine, for "printing labels [*sic*]," and according to the complainant, the expenditure was for labels for "Mailer #1." There is no evidence, however, that the respondent ever made any expenditure specifically for labels for other mailers, and the respondent's expenditure to Ed Valentine and others for printing could have included the cost of labels for more than one mailer.

The complainant submitted a letter dated August 12, 2000, from Tony Garrett, the individual who supported the respondent. The letter states that Tony Garrett paid for "Postage and mailing service" in the amount of \$2,036.55 and for printing in the amount of \$809.71. The letter further states:

I know you reported an overall debt that included the amount due to me. I don't know if you are supposed to break those amounts down to itemize what each charge was for. I looked at it as a total amount due for the efforts I was responsible for and that was what I told you about.

....

Please understand that this is not pressing you for payment.

Therefore, Tony Garrett's expenditures for mailing service and printing costs could have included the cost of labels for mailers.

The complainant furnished a copy of Tony Garrett's answers to some of her interrogatories in her lawsuit. He swore in one of his answers that the respondent "verbally agreed to reimburse [him] for expenses advances on behalf of the [respondent's] campaign" and that

he “subcontracted” with Graphics Management and Summers Mailing in connection with the respondent’s campaign. Tony Garrett’s letter and answers to interrogatories are credible evidence that he made loans to the respondent’s campaign in the amounts of \$2,036.55 and \$809.71, that he informed the respondent of those loans, and that the respondent agreed to repay the loans. The respondent’s campaign finance reports filed in 2000 and 2001 do not, however, disclose that the respondent accepted any such loans from Tony Garrett.

Therefore, there is credible evidence that the respondent did not disclose loans in the amounts of \$2,036.55 and \$809.71 that he accepted from Tony Garrett, an individual who supported him in connection with the May 6, 2000, special election, and there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #3” or that he failed to disclose the alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #4” in the period covered by his 8-day pre-election report.

24. As to (3): The complainant alleged that the respondent did not disclose an expenditure in the amount of \$904 (estimated) that he made on May 3, 2000, for printing “Mailer #5” on his July semiannual report. The complainant submitted invoices from the Color Laser Institute for printing materials related to the respondent’s campaign as well as copies of certain campaign materials. However, none of those invoices is dated in May 2000, or is in an amount that equals or approximates the amount of the alleged expenditure for printing “Mailer #5,” and there is nothing to indicate the contents of “Mailer #5” or to indicate which, if any, of the copies of the campaign materials she submitted is “Mailer #5.” Therefore, there is no evidence that the respondent failed to disclose the alleged expenditure in the amount of \$904 that he allegedly made on May 3, 2000, for printing “Mailer #5” on his July 15 report.
25. As to (5): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$1,000 (estimated) that he made on an unspecified date for delivery services rendered by C. P. Henry d/b/a Graphics Management. The complainant furnished a copy of the answers of Tony Garrett, an individual who supported the respondent, to some of her interrogatories in her lawsuit. Tony Garrett swore in one of his answers that the respondent “verbally agreed to reimburse [him] for expenses advances on behalf of the [respondent’s] campaign” and that he “subcontracted” with Graphics Management in connection with the respondent’s campaign. He further swore that he had “no arrangement of any sort for compensation from [the respondent’s] Campaign, [the respondent] as an individual, nor [sic] any other entity for his advice and counsel of [sic] any other services.” Tony Garrett’s answers to interrogatories are credible evidence that, acting on behalf of the respondent’s campaign, he made expenditures to Graphics Management. The complainant submitted a copy of a letter from Tony Garrett dated August 12, 2000, in which he itemizes certain unreimbursed expenditures that he made on behalf of the respondent in connection with the May 6, 2000, election, including an expenditure for printing in the amount of \$809.71. She also submitted a copy of a check dated April 21, 2000, drawn on Tony Garrett’s account, and made payable to “Graphics Mng.” The expenditure was made on April 21, 2000; therefore, it was made in the period covered by the respondent’s 8-day pre-election report and not in the period covered by his July 15 report. Tony Garrett characterized the expenditure as a loan or advance in his answer to an interrogatory that the complainant submitted in her lawsuit. However, the loan was not disclosed in either report. Thus, there is credible evidence that

the respondent did not disclose a loan in the amount of \$809.71 that he accepted from Tony Garrett, an individual who supported him, and there is no evidence that the respondent did not disclose an alleged expenditure in the amount of \$1,000 that he allegedly made to C. P. Henry d/b/a Graphics Management for delivery services in the period covered by his 30-day pre-election report.

26. As to (6): The complainant alleges that the respondent did not disclose expenditures totaling \$1,500 (estimated) that he made on an unspecified date or dates to ACORN for phone bank and other campaign services on his July 15 report. (ACORN is an acronym for the Association of Community Organizations for Reform Now). There is no evidence that the respondent made expenditures to ACORN for phone bank or other campaign services in the period covered by his July 15 report. Therefore, there is credible evidence that the respondent did not fail to disclose the alleged expenditures totaling \$1,500 that he allegedly made to ACORN for phone bank and other campaign services on his July 15 report.
27. As to (7) and (9): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$2,622.50 that he made on an unspecified date to State Representative Terri Hodge “for services” and an expenditure in the amount of \$400 that he made on April 28, 2000, to KHVN radio for ads on his July 15 report. The complainant submitted a copy of a check dated April 27, 2000, drawn on the respondent’s business account, and made payable to State Representative Hodge in the amount of \$2,650, and a copy of an agreement dated April 26, 2000, between the respondent and KHVN radio for sixteen 60-second broadcasts at a total cost of \$400.

These expenditures were not disclosed on the respondent’s July 15 report, but they were disclosed on the respondent’s corrected July 15 report that he filed on September 28, 2000. The respondent stated in his explanation of the correction that the expenditures were not reported “due to misplacement of files” and further stated, “After searching files these expenses were found after searching and after a complaint was filed.”

These are essentially the same allegations that the complainant made in sworn complaint SC-200850 filed on August 4, 2000. In response to those allegations, the respondent swore that after sworn complaint SC-200850 was filed he made a thorough search of his files, discovered two expenditures totaling \$3,022.50 that were not included in his July 15 report, and filed a good-faith affidavit and corrected report disclosing those expenditures. The expenditures were the \$2,622.50 expenditure that the respondent made to the state representative and the \$400 expenditure that he made to the radio station.

The commission found in sworn complaint SC-200850 that there was credible evidence that the respondent reported the omitted expenditures on his corrected July 15 report and that he filed a good-faith affidavit with that report. The commission noted that the commission rules in effect at that time provided that both a corrected report and the original report would be deemed to have been timely filed, and no fine would be assessed against a filer who filed a corrected report (other than an 8-day pre-election report), if the corrected report was accompanied by the respondent’s good-faith affidavit explaining why the information included on the original report was reported in error. Ethics Commission Rules §§ 18.49 and

18.83 (repealed Dec. 14, 2001). Therefore, the commission found that there was credible evidence that the respondent did not violate section 254.031 of the Election Code with respect to the political expenditures omitted from the July 15 report but included in the corrected July 15 report.

Although the commission revised its rules governing administrative penalties and sworn complaint fines on December 14, 2001, to provide that the commission is not required to waive the administrative penalty for a respondent who files a corrected report but may consider the correction to be a mitigating factor in determining the amount of any fine to be assessed in any sworn complaint proceeding, the revision had no retroactive effect and was not intended to apply to reports that were corrected before the rules were revised. Therefore, the commission will not revisit the findings that it made in sworn complaint SC-200850.

The complainant further alleged that the respondent made installment payments totaling \$8,000 to the state representative over two election years, and she referred to statements that the respondent made “in the DMN,” which appears to be a reference to the *Dallas Morning News*. The complainant stated that she did not know the dates on which those installment payments were made or the amounts of the payments, and she did not specify which “election years” she is referring to in her complaint. We assume that she is referring to the May 6, 2000, special election, and the May 5, 2001, election, which are covered by the respondent’s campaign finance reports filed in 2000 and 2001.

The complainant submitted no evidence that the respondent made more than two expenditures to the state representative. The first expenditure was in the amount of \$1,500, and it was made on March 29, 2000. The respondent disclosed that expenditure on his 30-day pre-election report, and he described the purpose of the expenditure as “campaign.” (There is no description of the expenditure in the memo field on the respondent’s check). The second expenditure was in the amount of \$2,650, and it was made on April 27, 2000. The respondent disclosed that expenditure on his corrected July 15 report, and he described the purpose of the expenditure as “campaign/walkers.” (The expenditure is described as a “consultant fee” in the memo field on the respondent’s check.)

Therefore, there is no evidence that the respondent made installment payments totaling \$8,000 to the state representative in the periods covered by the campaign finance reports that he filed in 2000 and 2001 in connection with the May 6, 2000, special election, and the May 5, 2001, election, and thus no evidence that the respondent was required to disclose such payments as expenditures on his campaign finance reports.

28. As to (8): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$330 (estimated) that he made on May 2, 2000, to “US Postage.” The complainant submitted a copy of a credit card receipt from the United States Postal Service for an expenditure by credit card in the same amount. The receipt is signed by the respondent and dated May 2, 2000. It was apparently furnished to the complainant in response to her discovery in the lawsuit she filed against the respondent. The respondent’s July 15 report does not disclose an expenditure that was made on that date or in that amount. Thus, there is credible evidence that the respondent did not disclose an expenditure in the

amount of \$330 that he made on May 2, 2000, to the United States Postal Service for postage purchased in connection with the May 6, 2000, special election.

29. As to (10): The complainant alleges that the respondent did not disclose an expenditure in the amount of \$6,000 (estimated) that he made on an unspecified date to pay Don Johnson d/b/a Welcome House for election day card pushers and walkers. The complainant furnished no invoices or other evidence of the alleged expenditure. The respondent's July 15 report discloses that on May 2, 2000, he made two expenditures to Don Johnson—one in the amount of \$600 for walkers, and another in the amount of \$370 for an undisclosed purpose. The respondent's July 15 report does not disclose any other expenditure that he made to Don Johnson, and it does not disclose any expenditure that he made to Welcome Home. There is no evidence, however, that the respondent made any other expenditure to Don Johnson. But there is credible evidence that the respondent did not disclose the purpose of the expenditure in the amount of \$370 that he made to Don Johnson on May 2, 2000.
30. The following contributions were cited in the complaint as not having been disclosed on the respondent's July semiannual report:
- (1) "Dallas Committee on Urban Affairs for a total of \$1,000 5-1-00"
 - (2) "staffers and CEO of Trendsetters Staffing for a total of \$2,500 4-27 thru 5-2-00"
31. As to (1) and (2): The complainant alleges that the respondent did not disclose a contribution in the amount of \$1,000 that he accepted from the Dallas Committee on Urban Affairs on May 1, 2000, and contributions totaling \$2,500 that he accepted from the CEO and staffers of Trendsetters Staffing from April 27, 2000, through May 2, 2000.

These are essentially the same allegations that the complainant made in sworn complaint SC-200850 filed on August 4, 2000. In response to those allegations, the respondent swore that after sworn complaint SC-200850 was filed he made a thorough search of his files, discovered five contributions totaling \$3,500 that were not included in his July 15 report, and filed a good-faith affidavit and corrected report disclosing those contributions. Among the contributions were a \$1,000 contribution that the respondent accepted on May 1, 2000, from the Dallas Committee on Urban Affairs, and four contributions that the respondent accepted from individuals whom the complainant alleges were the CEO and staffers of Trendsetter Staffing—a \$500 contribution that the respondent accepted on April 27, 2000, from Charles Joekel (the alleged CEO); and a \$1,000 contribution that the respondent accepted on April 27, 2000, from Jack Holley, a \$500 contribution that the respondent accepted on April 28, 2000, from Norma Devine, and a \$500 contribution that the respondent accepted on May 1, 2000, from Rascal Cox (the alleged staffers).

The commission found in sworn complaint SC-200850 that there was credible evidence that the respondent reported the omitted contributions on his corrected July 15 report and that he filed a good-faith affidavit with that report. The commission noted that the commission rules in effect at that time provided that both a corrected report and the original report would be deemed to have been timely filed, and no fine would be assessed against a filer who filed a corrected report (other than an 8-day pre-election report), if the corrected report was

accompanied by the respondent's good-faith affidavit explaining why the information included on the original report was reported in error. Ethics Commission Rules §§ 18.49 and 18.83 (repealed Dec. 14, 2001). Therefore, the commission found that there was credible evidence that the respondent did not violate Elec. Code § 254.031 with respect to the political contributions omitted from the July 15 report but included in the corrected July 15 report.

Although the commission revised its rules governing administrative penalties and sworn complaint fines on December 14, 2001, to provide that the commission is not required to waive the administrative penalty for a respondent who files a corrected report but may consider the correction to be a mitigating factor in determining the amount of any fine to be assessed in any sworn complaint proceeding, the revision had no retroactive effect and was not intended to apply to reports that were corrected before the rules were revised. Therefore, the commission will not revisit the findings that it made in sworn complaint SC-200850.

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 disclose all of the political contributions accepted and all of the political expenditures made by the candidate during the reporting period. If the political contributions accepted from a single contribution in that period exceed \$50, the contributions must be itemized on schedule A. If the political expenditures made to a single payee in that period exceed \$50, the expenditures must be itemized on schedule F or G. Elec. Code § 254.031.

30-Day Pre-election Report

2. There is credible evidence that the respondent did not fail to disclose on his 30-day pre-election report an alleged expenditure in the amount of \$400 that he allegedly made on March 8, 2000, to Ed Valentine for a walk phone list. Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to that allegation.
3. There is credible evidence that the respondent did not fail to disclose on his 30-day pre-election report alleged expenditures totaling \$1,600 that he allegedly made to Lowes for stakes for yard signs in the period covered by his 30-day pre-election report. Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to the alleged expenditures.
4. There is no evidence that the respondent accepted undisclosed political contributions in the amount of \$10,000, that the respondent used undisclosed contributions to purchase money orders, or that the respondent used \$10,000 worth of money orders to pay for office space and yard signs in the period covered by his 30-day pre-election report. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged contributions and expenditures.

8-Day Pre-election Report

5. There is no evidence that the respondent did not disclose an alleged expenditure that he allegedly made on April 7, 2000, in the amount of \$750 for a hotel room for a fundraiser. However, there is credible evidence that on April 7, 2000, H. J. Johnson or the Dallas Progressive Council made an expenditure for food and beverages for a reception for the respondent at the Dallas Grand Hotel in connection with the May 6, 2000, special election; credible evidence that the respondent accepted the food and beverages for that reception as an in-kind contribution from the contributor; and credible evidence that the respondent failed to disclose the contribution on his 8-day pre-election report. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure, and there is credible evidence that the respondent violated Elec. Code § 254.031 by accepting the in-kind contribution and not disclosing it on his 8-day pre-election report.
6. There is credible evidence that the respondent made an expenditure on April 17, 2000, to Color Laser Institute for 10,000 copies of a political flier, and credible evidence that he did not disclose that expenditure on his 8-day pre-election report. Therefore, there is credible evidence that the respondent violated Elec. Code § 254.031 by making the expenditure and not disclosing it on his 8-day pre-election report.
7. There is no evidence that the respondent failed to disclose an alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #2” and an alleged expenditure in the amount of \$300 that he allegedly made for labels for “Mailer #3” in the period covered by his 8-day pre-election report. However, there is credible evidence that the respondent did not disclose contributions in the form of loans in the amounts of \$2,036.55 and \$809.71 that he accepted from Tony Garrett, an individual who supported him in the May 6, 2000, special election. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditures, and there is credible evidence that the respondent violated Elec. Code § 254.031 by accepting the loans from Tony Garrett and not disclosing them on his campaign finance reports filed in 2000 and 2001.
8. There is no evidence that the respondent failed to disclose an alleged expenditure in the amount of \$892 that he allegedly made for printing “Mailer #3” in the period covered by his 8-day pre-election report. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure.
9. There is no evidence that the respondent did not disclose an alleged expenditure in the amount of \$150 that he allegedly made on April 19, 2000, to Eller Media for “services” in the period covered by his 8-day pre-election report. However, there is credible evidence that the respondent did not disclose the date of an expenditure in the amount of \$150 that he made to the Profile Group for billboards and signs in the period covered by his January semiannual report. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure, and there is credible evidence that the respondent violated Elec. Code § 254.031 by not disclosing the date of the expenditure that he made to the Profile Group.

10. There is no evidence that the respondent failed to disclose on his 8-day pre-election report an alleged expenditure in the amount of \$754 that he allegedly made on April 26, 2000, for postage for "Mailer #3b." Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure.
11. There is no evidence that the respondent failed to disclose on his 8-day pre-election report an alleged expenditure in the amount of \$400 that he allegedly made on April 26, 2000, for printing "Mailer #3b." Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure.
12. There is credible evidence that the respondent did not fail to report an in-kind contribution of office space and telephone usage valued at \$800 that he was alleged to have accepted from the Black State Employees Association of Texas. Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to the alleged contribution.

July Semiannual Report

13. There is no evidence that the respondent failed to disclose on his July semiannual report an alleged expenditure in the amount of \$904.43 that he allegedly made in May 2000 for printing "Mailer #4." Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to the alleged expenditure.
14. There is no evidence that the respondent did not disclose on his July semiannual report an expenditure in the amount of \$300 that he allegedly made on May 2, 2000, for labels for "Mailer #4" and an alleged expenditure in the amount of \$300 that he allegedly made on May 3, 2000, for labels for "Mailer #5." Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditures.
15. There is no evidence that the respondent did not disclose on his July semiannual report an alleged expenditure in the amount of \$904 that he allegedly made on May 3, 2000, for printing "Mailer #5." Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to the alleged expenditure.
16. There is no evidence that the respondent did not disclose an expenditure in the amount of \$1,000 that he allegedly made for services to C. P. Henry d/b/a Graphics Management in the period covered by the July semiannual report. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure.
17. There is credible evidence that the respondent did not fail to disclose an expenditure in the amount of \$1,500 that he allegedly made to ACORN for phone bank and other campaign services in the period covered by the July 15 report. Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 as to the alleged expenditure.
18. The respondent disclosed a \$400 expenditure that he made on April 28, 2000, to KHVN radio for ads and a \$2,622.50 expenditure that he made to State Representative Terri Hodge for services on his corrected July 15 report. Based on the rule in effect at the time the corrected report was filed, there is credible evidence that the respondent did not violate Elec.

Code § 254.031 with respect to the political expenditures omitted from the July 15 report but included in the corrected July 15 report.

There is no evidence that the respondent made installment payments totaling \$8,000 to State Representative Hodge in the periods covered by the campaign finance reports that he filed in 2000 and 2001 in connection with the May 6, 2000, special election and the May 5, 2001, election. Therefore, there is credible evidence that the respondent did not violate Elec. Code § 254.031 by not disclosing the alleged installment payments.

19. There is credible evidence that the respondent did not disclose on his July semiannual report an expenditure in the amount of \$300 that he made on May 2, 2000, to the U.S. Postal Service. Therefore, there is credible evidence that the respondent violated Elec. Code § 254.031 by not disclosing that expenditure.
20. There is no evidence that the respondent did not disclose an alleged expenditure in the amount of \$6,000 that he allegedly made to Don Johnson d/b/a Welcome House for election day card pushers and walkers in the period covered by his July 15 report. However, there is credible evidence that the respondent did not disclose the purpose of an expenditure in the amount of \$370 that he made to Don Johnson on May 2, 2000. Therefore, there is no evidence that the respondent violated Elec. Code § 254.031 as to the alleged expenditure, and there is credible evidence that the respondent violated Elec. Code § 254.031 by not disclosing the purpose of the expenditure that he made to Don Johnson on May 2, 2000.
21. There is credible evidence that the respondent disclosed a \$1,000 contribution that he accepted on May 1, 2000, from the Dallas Committee on Urban Affairs and four contributions that he accepted from individuals who the complainant alleges were the CEO and staffers of Trendsetters Staffing—a \$500 contribution that the respondent accepted on April 27, 2000, from Charles Joekel (the alleged CEO); and a \$1,000 contribution that the respondent accepted on April 27, 2000, from Jack Holley, a \$500 contribution that the respondent accepted on April 28, 2000, from Norma Devine, and a \$500 contribution that the respondent accepted on May 1, 2000, from Racal Cox (the alleged staffers). Based on the rules in effect at the time the corrected report was filed, there is credible evidence that the respondent did not violate Elec. Code § 254.031 with respect to the political contributions omitted from the July 15 report but included in the corrected July 15 report.

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.

Statement of Respondent

2. The respondent offers this additional statement in reference to Section III, Facts Supported by Credible Evidence and Section IV, Findings and Conclusions of Law:

The respondent challenges the authenticity and veracity of the documentary evidence submitted by the complainant to substantiate the findings set forth in Section IV, Paragraphs 5, 6, and 19.

3. 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 agrees that this Order shall be a final and complete resolution of Sworn Complaint SC-220446.
4. The respondent acknowledges that a candidate's campaign finance reports must disclose all of the political contributions accepted and all of the political expenditures made by the candidate during the reporting period. The respondent agrees to fully and strictly comply with this requirement of the law.
5. 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 violations described under Section IV, Paragraphs 5, 6, 7, 9, 19, and 20, 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 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, consequences, extent, and gravity of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Section IV, Paragraphs 5, 6, 7, 9, 19, and 20.

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-220446;
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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 6, 2003; and
4. that the executive director shall promptly refer SC-220446 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-220446 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2004.

James Fantroy, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director