

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOEL I. MARKS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-230522

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230522 filed against Joel I. Marks. The commission met again on September 11, 2003, to consider Sworn Complaint SC-230522. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.183, 254.063, and 254.036 of the 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 failed to file several campaign finance reports and failed to have a campaign finance report notarized.

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 city council in a May 18, 2002, runoff election in The Colony, Texas. The main election was held on May 4, 2002.
2. The respondent filed a campaign treasurer appointment in connection with his candidacy for city council. The respondent chose the modified reporting option for the May 2002 election cycle.
3. On May 10, 2002, the respondent filed a campaign finance report in connection with the election. The report covered the period from March 25, 2002, through May 8, 2002. On the cover sheet of the report, the respondent designated the report as an "8th day before election" report, a "runoff" report, and an "exceeded \$500 limit" report. The respondent signed the report, but it was not notarized.

4. The report disclosed contributions totaling \$650 and expenditures totaling \$660.99. According to the report, the respondent exceeded \$500 in expenditures on May 2, 2002.
5. In response to this complaint, the respondent submitted a response in which he swears that the report should have also been marked as a "Final Report." The respondent swears that he inadvertently forgot to mark the final report box.
6. In response to this complaint, the respondent filed another report on June 5, 2003, and designated it as a final report. The report covered the period from May 9, 2002, through June 4, 2003. The respondent reported no contributions and no expenditures.

IV. Findings and Conclusions of Law

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

Late Reports:

1. A candidate must file semiannual reports January and July. ELEC. CODE § 254.063. In addition to semiannual reports, an opposed candidate must file pre-election reports unless the candidate chooses modified reporting and does not exceed \$500 in contributions or \$500 in expenditures in connection with the election. ELEC. CODE §§ 254.064, 254.181.
2. If a candidate exceeds the \$500 threshold after the filing deadline for the 30-day pre-election report, the candidate is required to file a report no later than 48 hours after the \$500 threshold is exceeded. ELEC. CODE § 254.183.
3. The evidence shows that the respondent chose the modified reporting option and that he exceeded the \$500 expenditure threshold on May 2, 2002. Therefore, the respondent was required to file an "exceeded \$500 limit" report by May 4, 2002.
4. The respondent filed an 8-day runoff report on May 10, 2002. That report covered the period that should have been covered by the "exceeded \$500 limit" report. Therefore, there is credible evidence that the respondent failed to file a timely "exceeded \$500 limit" report in violation of section 254.183 of the Election Code.
5. The evidence also shows that the respondent had a campaign treasurer appointment on file during the period covered by the July 2002 and the January 2003 semiannual reports and was therefore required to file those reports.¹

¹ Designating a report as a final report terminates a candidate's campaign treasurer and relieves a candidate of the duty to file reports as a candidate. ELEC. CODE § 254.183. If the respondent had designated his "exceeded \$500 limit" report as a "final" report, he would not have been required to file the July 2002 and January 2003 semiannual reports.

6. On June 5, 2003, in response to this complaint, the respondent filed a report covering the period covered by the July 2002 and the January 2003 semiannual reports. Therefore, there is credible evidence that the respondent failed to file timely July 2002 and January 2003 semiannual reports in violation of section 254.063 of the Election Code.

Notarization:

7. A campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h).
8. A campaign finance report is considered to be under oath by the person required to file the report, and the person is subject to prosecution under chapter 37 of the Penal Code regardless of the absence of or a defect in the affidavit. ELEC. CODE § 254.036(h).
9. An “affidavit” is a written statement of facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified by the officer under his or her seal of office. *Bloyed v. General Motors Corp*, 881 S.W. 2d 422, (Tex. App. Texarkana 1994).
10. An oath made in Texas may be administered and a certificate of the fact given by a notary public. GOV'T CODE § 602.002(4).
11. The evidence shows that on May 10, 2002, the respondent filed a campaign finance report that was signed by him but was not notarized. Therefore, there is credible evidence that the respondent violated section 254.036(h) of the 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 if a candidate who selects the modified reporting option exceeds the \$500 threshold after the filing deadline for the 30-day pre-election report, the candidate is required to file a report no later than 48 hours after the \$500 threshold is

exceeded. ELEC. CODE § 254.183. The respondent also acknowledges that a candidate must file semiannual reports in January and July. ELEC. CODE § 254.063. The respondent also acknowledges that a campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. ELEC. CODE § 254.036(h). The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, 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, 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.

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-230522;
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 October 9, 2003; and
4. that the executive director shall promptly set SC-230522 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230522 as proposed in this ORDER and AGREED RESOLUTION.

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

Joel I. Marks, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director