

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DALE WILCOX,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31905109 AND SC-31911161

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 14, 2020, to consider sworn complaints SC-31905109 and SC-31911161. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.036(h), 254.063, and 254.064 of the Election Code, and Section 571.1242 of the Government Code and Section 12.52 of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle these complaints without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaints alleged that the respondent: 1) failed to file the January 2018, July 2018, January 2019, and July 2019 semiannual campaign finance reports, in violation of Section 254.063 of the Election Code; 2) failed to execute the affidavit required to be included with the 8-day pre-election campaign finance report for the May 4, 2019, election, in violation of Section 254.036(h) of the Election Code; and 3) failed to file a campaign finance report within 48 hours of exceeding the \$500 expenditure limit for candidates who have filed a declaration of intent not to accept more than \$500 in contributions or make more than \$500 in expenditures, in violation of Section 254.183 of the Election Code, or, in the alternative, did not file a 30-day pre-election report by the April 4, 2019, deadline (if the respondent made political expenditures or accepted political contributions in the aggregate that exceeded \$500 on or before April 4, 2019), in violation of Section 254.064 of the Election Code.

The Commission also considered whether the respondent submitted a response to the sworn complaints as required by Section 571.1242 of the Government Code and Section 12.52 of the Ethics Commission Rules.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was an unsuccessful opposed candidate for the city council of Addison, Texas, in the May 4, 2019, election.

Failure to File Semiannual Campaign Finance Reports

2. Sworn complaint SC-31911161 alleges that the respondent failed to file the January 2018, July 2018, January 2019, and July 2019 semiannual campaign finance reports.
3. The respondent was a successful candidate for Addison City Council in the May 9, 2015, election, for which he filed several campaign finance reports.
4. Records on file with the Town of Addison contain no campaign finance filings by the respondent between the conclusion of his 2015 campaign for Addison City Council and the filing of his February 15, 2019, campaign treasurer appointment for the May 2019 election. In response to questions from Commission staff, however, the respondent averred that he filed a campaign treasurer appointment for the May 2017 election for Addison City Council, in which he unsuccessfully sought reelection.
5. The respondent further admitted that he paid monthly bank fees for his campaign account during the campaign finance reporting periods at issue.
6. After filing his campaign treasurer appointment on February 15, 2019, the respondent next filed his 8-day pre-election report on April 26, 2019. This report was not designated a final report. The respondent filed no further reports until January 31, 2020, when he filed two late pre-election reports for the May 2019 election and a purported final report covering the dates March 27, 2019, through January 31, 2020, in which the respondent checked the box on the cover sheet to indicate that it was a final report, but with which he failed to include a signed Designation of Final Report page ("Form C/OH – FR").
7. A candidate shall file two reports for each year as provided by the Election Code. 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. Tex. Elec. Code § 254.063.

8. “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. *Id.* § 251.001(1). Among other actions, filing a campaign treasurer appointment or making a campaign expenditure constitutes affirmative action for these purposes. *See id.* A person who files a campaign treasurer appointment or who makes campaign expenditures is therefore required to file semiannual campaign finance reports. *See id.* §§ 251.001(1); 254.063. An unsuccessful candidate who has not filed a final report and who still has a campaign finance report on file, or who continues to make campaign expenditures for the purpose of satisfying financial obligations incurred in connection with their campaign, remains obligated to file semiannual campaign finance reports. *See id.* §§ 251.001; 254.063; 254.065.
9. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a campaign finance report, the candidate may designate the report as a “final” report. The designation of a report as a final report terminates the candidate’s campaign treasurer appointment and relieves the candidate of the duty to file additional campaign finance reports as a candidate, provided that no further reportable activity with respect to the candidacy occurs. *Id.* § 254.065. A candidate’s final report must include the statements required by Section 20.231 of the Ethics Commission Rules, as provided in the Designation of Final Report form (“Form C/OH – FR”). 1 Tex. Admin. Code § 20.231.
10. The respondent contends that he filed a campaign treasurer appointment for the May 2017 election, and admits that he paid monthly fees on his campaign bank account during the reporting periods for the January 2018, July 2018, and January 2019 campaign finance reports. By paying the monthly fees on his campaign account during these periods, the respondent willingly took affirmative action for the purpose of satisfying financial obligations incurred in connection with his campaign for election to the Addison City Council, which obligated him to file semiannual campaign finance reports. *See Tex. Elec. Code* § 251.001(1). Further, the respondent alleges that he filed a campaign treasurer appointment for the May 2017 election, which would constitute affirmative action for the purpose of gaining nomination or election to public office, which would independently obligate the respondent to file semiannual campaign finance reports until he filed a final report. *See id.* §§ 251.001(1); 254.063; 254.065. Because the respondent continued to make campaign expenditures in the form of monthly bank fee payments, and has not filed a final report to terminate the filing obligations imposed by his alleged 2017 campaign treasurer appointment,¹ there is credible evidence of violations of Section 254.063 of the Election

¹ While the respondent filed a report after the complaints were filed that covers the dates March 27, 2019, through January 31, 2020, which is designated a final report on the cover sheet, this report does not include a signed Designation of Final Report form (“Form C/OH – FR”), and therefore is not legally effective. *See* 1 Tex. Admin. Code § 20.231 (requiring that a final report by a candidate include certain signed statements). Further, this purported final report was

Code for the respondent's failure to file the January 2018, July 2018, and January 2019 semiannual campaign finance reports. *See id.* §§ 251.001(1); 254.063; 254.065; 1 Tex. Admin. Code § 20.231.

11. The respondent filed a campaign treasurer appointment for the May 4, 2019, election on February 15, 2019. He did not timely file a July 2019 semiannual campaign finance report. Because the respondent did not timely file his July 2019 semiannual report and has not filed an effective final report, there is credible evidence of a violation of Section 254.063 of the Election Code for failure to timely file the July 2019 semiannual campaign finance report. *See Tex. Elec. Code* §§ 251.001(1); 254.063; 254.065; 1 Tex. Admin. Code § 20.231.
12. According to the respondent's subsequently-filed reports, the respondent's unfiled July 2019 campaign finance report should have disclosed \$101.41 in expenditures, including a \$15.00 bank account fee. Apart from the aforementioned bank account fees, there was no activity required to be disclosed on the other unfiled semiannual reports.

Failure to Execute Affidavit

13. Sworn complaint SC-31911161 alleges that the respondent failed to sign and notarize the affidavit required to be included in his 8-day pre-election campaign finance report for the May 4, 2019, election.
14. Records on file with the Addison city secretary confirm that the respondent's 8-day pre-election report for the May 4, 2019, election was not signed or notarized.
15. The Election Code requires that each campaign finance report that is not filed by electronic transfer 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." *Tex. Elec. Code* § 254.036(h).
16. The respondent's 8-day pre-election report for the May 4, 2019, election does not bear any oath, signature, or notary stamp. The affidavit form provided on cover sheet page two of the campaign finance report is entirely blank. There is therefore credible evidence of a violation of Section 254.036(h) of the Election Code.

not filed until after the semiannual reports at issue in this complaint were due.

Failure to File Reports After Exceeding Modified Reporting Threshold

17. Sworn complaint SC-31905109 alleges that the respondent failed to file a campaign finance report within 48 hours of exceeding the \$500 expenditure limit for candidates who have elected to file under the modified reporting rules, or, in the alternative, did not file a 30-day pre-election report by the April 4, 2019, deadline after exceeding the \$500 expenditure limit for candidates who have elected to file under the modified reporting rules.
18. The respondent included with his campaign treasurer appointment for the May 4, 2019, election an executed declaration of modified reporting.
19. Following some small expenditures totaling \$170, the respondent made a \$521.81 expenditure to Vistaprint on April 1, 2019.
20. The respondent did not file a 30-day pre-election campaign finance report by the April 4, 2019, deadline. The 30-day pre-election report was required to disclose activity from the beginning of the respondent's campaign through March 25, 2019. *See* Tex. Elec. Code § 254.064(b).
21. On April 26, 2019, the respondent filed his 8-day pre-election report, on which he disclosed activity from February 19, 2019, through April 26, 2019.² The report included a \$4,000 March 13, 2019, personal loan from the respondent to his campaign, in addition to \$170 in small campaign expenditures through the end of the 30-day reporting period. This campaign activity was required to be disclosed by April 4, 2019, on the 30-day pre-election report that the respondent failed to file. *See id.* The 8-day pre-election report further contained expenditures of more than \$500 each to Vistaprint, Gravis Marketing, and PayPal.
22. An opposed candidate required to file pre-election campaign finance reports may instead file under the modified reporting provisions if the candidate does not intend to accept political contributions that in the aggregate exceed \$500 or make political expenditures that in the aggregate exceed \$500 in connection with the election. Tex. Elec. Code § 254.181(a). To be entitled to file under the modified reporting provisions, a candidate must file with the campaign treasurer appointment a written declaration of intent not to exceed \$500 in political contributions and political expenditures in the election. *Id.* § 254.182. A candidate filing under the modified reporting provisions is not required to file any reports of political contributions and political expenditures other than the semiannual reports required to be filed not later than July 15 and January 15, except as directed by the modified reporting provisions. *Id.* § 254.184.
23. A candidate who exceeds \$500 in political contributions or political expenditures in the

² The respondent did not disclose most of his expenditures on Schedule F1 as required by Section 254.036(a) of the Election Code, but instead attached a computer print-out reflecting his bank account activity, which reflects the expenditure to Vistaprint and some of the other expenditures discussed in this Order and Agreed Resolution.

election shall file all subsequent pre-election reports as required by Section 254.064 of the Election Code. *Id.* § 254.183(a). If a candidate exceeds either of the \$500 limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. *Id.* § 254.183(b); 1 Tex. Admin. Code § 20.217(g).

24. Section 254.064 of the Election Code requires each candidate who has an opponent whose name is to appear on the ballot to file two reports. Tex. Elec. Code § 254.064(a). The first of these reports must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. *Id.* § 254.064(b). This 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 under the campaign finance reporting statutes, as applicable, and continuing through the 40th day before election day. *Id.* 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. *Id.* § 254.064(c).
25. The respondent first exceeded the \$500 cumulative expenditure limit on April 1, 2019, when he made a \$521.81 expenditure to Vistaprint. This was more than 30 days before the May 4, 2019, election. Therefore, it did not trigger the 48-hour reporting requirement. However, after exceeding the \$500 limit, the respondent was required to file the subsequent pre-election reports, which included the 30-day pre-election report, due by April 4, 2019. *See* Tex. Elec. Code § 254.183(a). Based on the activity disclosed by the respondent in the 8-day pre-election report, the respondent was required to disclose by April 4, 2019, in the 30-day pre-election report \$170 in political expenditures and a \$4,000 personal loan to his campaign. The respondent filed his first campaign finance report on April 26, 2019. There is therefore credible evidence that the respondent violated Section 254.064 of the Election Code by not timely filing the 30-day pre-election report.
26. The respondent's subsequent expenditures of more than \$500 each to Gravis Marketing and Paypal did not trigger a requirement to file further campaign finance reports within 48 hours of the expenditures. As noted above, the 48-hour reporting requirement only applies if the candidate's cumulative expenditures surpass \$500 after the 30th day before the election. Expenditures incurred after the \$500 expenditure limit is exceeded do not trigger additional 48-hour reporting requirements. *See* 1 Tex. Admin. Code § 20.217(a) (characterizing the \$500 contribution and expenditure caps as cumulative limits). Therefore, there is credible evidence of no violation of Section 254.183(b) of the Election Code.

Response to the Sworn Complaints

27. Sworn complaint SC-31905109 was filed on May 30, 2019. Commission staff attempted to notify the respondent of the complaint by telephone on May 30 and 31, 2019, at the number provided on the sworn complaint, at which Commission staff had previously communicated with the respondent. The respondent did not answer, so Commission staff left voicemail messages, which the respondent did not return. Commission staff mailed and emailed a notice of the sworn complaint to the respondent on June 5, 2019. The email notice was sent to the email address provided in the sworn complaint, at which Commission staff had previously communicated with the respondent, and the mailed notice was sent to the address provided in the sworn complaint, which was also the address provided by the respondent in his most recent campaign finance filings. This notice informed the respondent that the alleged violation in the sworn complaint was a Category One violation, that a response was required not later than 10 business days from the date the notice was received, and that failure to respond constituted a separate violation for which a separate civil penalty could be assessed. According to the United States Postal Service's (USPS) tracking records, USPS delivered the notice to the respondent's address on June 7, 2019.
28. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint no later than June 21, 2019. Commission staff called the respondent on the telephone on June 19, 2019, to remind the respondent that his response was due. The respondent answered Commission staff's telephone call and acknowledged the deadline. The respondent emailed Commission staff on June 21, 2019, at 11:24 p.m. In his email, the respondent attacked the complainant's motives and defended his disclosure practices in general, but did not admit or deny the alleged violation. The email did not include the respondent's signature. Commission staff replied to the respondent's email, again asking the respondent to admit or deny the alleged violation, and pressing the respondent to correct his campaign finance reports. The respondent did not reply to this email.
29. On October 4, 2019, Commission staff sent the respondent a proposed agreed order to the email address from which the respondent sent his June 21, 2019, email. Commission staff asked that the respondent answer the offer by October 18, 2019. The respondent did not reply to Commission staff's offer.
30. On November 6, 2019, sworn complaint SC-31911161 was filed by the same complainant who had filed sworn complaint SC-31905109. Commission staff reached the respondent by telephone later that day. The respondent agreed to receive notification by email, and asked that Commission staff send the notification letter to yet another different email address. The respondent did not, however, sign and return the email waiver form sent by Commission staff.
31. On November 14, 2019, Commission staff mailed and emailed a notice of the new sworn

complaint to the respondent. The notice again informed the respondent that the alleged violations in the sworn complaint were Category One violations, that a response was required not later than 10 business days from the date the notice was received, and that failure to respond constituted a separate violation for which a civil penalty could be assessed. The notice also noted that sworn complaint SC-31905109 remained pending. The email notice was sent to the address provided by the respondent over the telephone, and the mailed notice was sent to the same address as the notice of the first complaint. According to USPS tracking records, USPS delivered the notice on November 20, 2019.

32. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint no later than December 6, 2019. On December 2, 2019, Commission staff called the respondent to remind him to file his response. The respondent asked for an extension, which Commission staff granted, setting a new deadline of December 16, 2019, for his response to sworn complaint SC-31911161. On December 17, 2019, after the new deadline had passed, the respondent emailed Commission staff again, making no response to the allegations but complaining further of harassment. The respondent indicated that he wished to hire an attorney and present his case in front of the Commission. Commission staff responded that he was at liberty to hire an attorney, but that his response was still late.
33. On January 15, 2020, Commission staff sent the respondent a further email inquiring about his response, and whether he had hired an attorney. The respondent did not answer, but on January 31, 2020, the respondent sent an email to the Addison city secretary filing certain late campaign finance reports. The respondent copied Commission staff on this email.
34. The respondent must respond to Commission staff's notice of a Category One complaint not later than the 10th business day after the date the respondent receives the notice. Tex. Gov't Code § 571.1242(a).
35. Section 12.52 of the Ethics Commission Rules requires that a response to a sworn complaint be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. 1 Tex. Admin. Code § 12.52. The respondent has not filed a legally compliant response to either sworn complaint addressed in this order, responding only with unsigned emails that fail to admit or deny the allegations set forth in the complaints, despite receiving notice from Commission staff that the allegations were Category One violations and that he was required to respond to each complaint within 10 business days under Section 571.1242(a) of the Government Code. Because Section 571.1242(c) of the Government Code provides that a respondent's failure to timely respond to a notice of a Category One complaint constitutes a Category One violation, there is credible evidence of violations of Section 571.1242 of the Government Code and Section 12.52 of the Ethics Commission Rules.

IV. 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 findings of fact and conclusions of law described under Section III, 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 these matters.
3. The respondent agrees that this order and agreed resolution represents the final, complete, and exclusive statement of the agreement between the respondent and the Commission concerning sworn complaints SC-31905109 and SC-31911161, and that this order and agreed resolution supersedes all prior agreements or understandings, whether written or oral, between the respondent and the Commission or the Commission's staff concerning sworn complaints SC-31905109 and SC-31911161. The respondent further agrees that this order and agreed resolution resolves only the allegations made in sworn complaints SC-31905109 and SC-31911161, and does not resolve or preclude consideration of or enforcement action upon additional violations alleged in any other sworn complaint.
4. The respondent acknowledges that a candidate who has a campaign treasurer appointment on file and has not filed a final report, or who continues to make campaign expenditures, remains a candidate and must file semiannual campaign finance reports until the candidate files a final campaign finance report and ceases to make campaign expenditures or engage in other activity as a candidate.
5. The respondent further acknowledges that each campaign finance report that is not filed by electronic transfer must be accompanied by a notarized affidavit executed by the person required to file the report.
6. The respondent further acknowledges that an opposed candidate who has filed a declaration of intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures must file all subsequent pre-election reports if the candidate exceeds the \$500 contribution or expenditure limit. The respondent further acknowledges that if a candidate exceeds the \$500 contribution or expenditure limit on or before the deadline for filing the 30-day pre-election report, then the candidate is required to file the 30-day and 8-day pre-election reports. The respondent further acknowledges that if a candidate exceeds the \$500 contribution or expenditure limit after the 30th day before the election, the candidate must file a campaign finance report within 48 hours of exceeding the limit, in addition to all subsequently-due pre-election reports.

7. Finally, the respondent acknowledges that a respondent must respond to Commission staff's notice of a Category One complaint not later than the 10th business day after the date the respondent receives the notice, and that the response must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent.
8. The respondent agrees to fully and strictly comply with the above requirements of law.

V. 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$750 civil penalty.

VII. 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-31905109 and SC-31911161.

AGREED to by the respondent on this _____ day of _____, 2020.

Dale Wilcox, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director