

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
DALINDA ALCANTAR,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-32204203

## FINAL ORDER

### I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on September 28, 2022, to consider sworn complaint SC-32204203. A quorum of the Commission was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the respondent's absence and found credible evidence of violations of Section 255.006 of the Election Code and Section 571.1242 of the Government Code. The Commission voted to issue this final order.

### II. Allegation

The complaint alleged that the respondent represented in political advertising signs that she held a public office that she did not hold by failing to include the word "for" in violation of Section 255.006 of the Election Code.

### 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 the successful candidate for South Texas College, Board of Trustees, District 4, in the May 7, 2022 election.
2. The complaint alleged that the respondent, as a non-incumbent candidate, did not include the word "for" before the name of the public office on her political advertising signs.

#### Failure of a Non-Incumbent to Include the Word "For"

3. The complaint included a photograph of one of the respondent's campaign yard signs. The sign read "Elect Dalinda Gonzalez Alcantar M. Ed. South Texas College Board of Trustees, District 4" and was missing the word "for."

4. Though not specifically addressed in the complaint, the respondent's other political advertising used the same language and also did not contain the word "for."
5. A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. Tex. Elec. Code § 255.006(a).
6. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold the office. *Id.* § 255.006(c).
7. The respondent was not the incumbent candidate when the political advertising was printed. The respondent failed to include the word "for" before the name of the office sought on her political advertising signs. Therefore, there is credible evidence of violations of Section 255.006 of the Election Code.

#### **Failure to Respond to Sworn Complaint**

8. Sworn complaint SC-32204203 was filed on April 25, 2022, and returned to the complainant for correction on May 2, 2022. The complaint was resubmitted on May 3, 2022. On May 9, 2022, Commission staff contacted the respondent at the telephone number provided in the sworn complaint and notified her of the resubmitted complaint. In the same conversation, the respondent verified her mailing address and provided her email address. Jurisdiction was accepted over the complaint on May 10, 2022. The Commission sent a notice of the sworn complaint to the respondent by certified mail, return receipt requested, to the address that the respondent verified over the telephone with Commission staff. The notice was returned to the Commission on July 13, 2022. The Commission sent a second notice of the sworn complaint to the respondent by certified mail, return receipt requested, on June 3, 2022. According to the United States Postal Service's (USPS) tracking records, the notice was delivered on June 6, 2022.
9. During a telephone call with Commission staff on June 27, 2022, the respondent stated that she had not received the notice letters. She requested an emailed copy of the notice be sent to the email address she verified with Commission staff. A copy of the notice was sent by email to the respondent's verified email address on June 27, 2022.
10. The notice of complaint letter informed the respondent that the alleged violation 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.

11. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
12. If an alleged violation is a Category One violation, a respondent must respond to the notice required by Section 571.123(b) of the Government Code not later than the 10th business day after the date the respondent receives the notice. Tex. Gov't Code § 571.1242(a). A respondent's failure to timely respond as required by Subsection (a) is a Category One violation. *Id.* § 571.1242(c). The response required by Subsection (a) must include any challenge the respondent seeks to raise to the Commission's exercise of jurisdiction. In addition, the respondent may: (1) acknowledge the occurrence or commission of a violation; (2) deny the allegations contained in the complaint and provide evidence supporting the denial; or (3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist. *Id.* § 571.1242(d).
13. The response required by Section 571.1242 of the Government Code must: (1) be in writing; (2) admit or deny the allegations set forth in the complaint; and (3) be signed by the respondent. 1 Tex. Admin. Code § 12.52(a). If a respondent does not submit a response within the time period prescribed by Section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b). If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the Commission may issue an order imposing a penalty for failure to file a complete response. *Id.* § 12.52(c).
14. The respondent did not file a response to the complaint, despite receiving notice from the Commission that the allegation was a Category One violation and that she was required to respond within 10 business days under Section 571.1242 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 a violation of Section 571.1242 of the Government Code.

#### **IV. Default Judgment**

1. The preliminary review hearing was held in person and by video teleconference on September 28, 2022, at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent failed to appear at the hearing, either in person or remotely.
2. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).

3. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23.
4. The first notice of hearing was sent to the respondent on August 8, 2022, by USPS certified mail, return receipt requested, and delivery confirmation. The notice stated that the hearing would be held on September 28, 2022, at 1:45 p.m. both in person and by video teleconference. The notice also stated that if the respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. A second notice of hearing was sent to the respondent on August 29, 2022, by USPS first class mail. The notice stated that the hearing would be held on September 28, 2022, at 1:45 p.m. both in person and by video teleconference. All notices were sent to the email and mailing addresses provided to the Commission by the respondent. The respondent's last known mailing address is 1502 Hawk Circle, McAllen, TX 78504-3354.
5. The Commission finds that the respondent received legally sufficient notice of the sworn complaint and the September 28, 2022, preliminary review hearing in this case. The respondent did not respond to the complaint or appear at the hearing, despite multiple notices from the Commission and attempts by Commission staff to communicate with the respondent and resolve the complaint. The Commission proceeded with the hearing in the respondent's absence and issued this final order in accordance with Section 12.23 of the Ethics Commission Rules. By failing to appear at the preliminary review hearing, the respondent forfeited her right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
6. The Commission finds credible evidence of violations of Section 255.006 of the Election Code and Section 571.1242 of the Government Code.

#### **IV. Sanction**

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.

3. The respondent's lack of good faith is relevant to the appropriate penalty for this sworn complaint. In particular, the respondent's failure to correct the political advertising and participate in the sworn complaint process are factors that the Commission considers in assessing the civil penalty. *See Id.*
4. Therefore, the Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$500. If the respondent does not pay the \$500 civil penalty within 30 days of the date of this order, then the civil penalty is increased to \$1,000 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: \_\_\_\_\_

FOR THE COMMISSION

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J.R. Johnson  
Executive Director  
Texas Ethics Commission