

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LENIS W. PIERCE, III,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31009270

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 7, 2010, to consider sworn complaint SC-31009270. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.063 of the Election Code, and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent failed to file a semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for criminal district attorney in Smith County, Texas.

Filing of July 2010 Semiannual Report

2. The complaint alleged that the respondent failed to file the July 2010 semiannual report. In response to the complaint, the respondent swore that he filed his July 2010 semiannual report with the Smith County Elections Administrator on October 4, 2010, and provided a date stamped copy of the report showing that it was received by the Smith County Elections Administration Office on October 4, 2010. The Smith County Elections Administration Office stated that they had not received the report. The only activity disclosed on the report provided to the commission by the respondent was a \$1,250 political expenditure from personal funds with a stated purpose of "filing fee." The respondent swore that he thought he signed the modified reporting declaration at the time

he filed his campaign treasurer appointment and thus, he believed that no additional reports were required of him.

Timely Response to Sworn Complaint

3. The United States Postal Service website shows that the notice of this complaint was delivered on September 17, 2010. The commission received the response to this complaint on October 29, 2010.

IV. Findings and Conclusions of Law

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

Filing of July 2010 Semiannual Report

1. A candidate is required to file two reports each year. The first report must be filed by 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 under this subchapter, as applicable, and continuing through June 30. ELEC. CODE § 254.063(b).
2. An opposed candidate may select modified reporting if the candidate does not intend to accept over \$500 in political contributions and make over \$500 in political expenditures. ELEC. CODE § 254.181. A candidate who is eligible to file on the modified schedule does not have to file pre-election reports but must file semiannual reports. ELEC. CODE § 254.184.
3. The respondent filed a campaign treasurer appointment on January 4, 2010. As a candidate for criminal district attorney with a campaign treasurer appointment on file, the respondent was required to file a semiannual report by July 15, 2010. Even if the respondent had selected modified reporting at the time he filed his campaign treasurer appointment, he still would have been required to file the July 2010 semiannual report. The report was due on July 15, 2010. The respondent swore that he filed the report on October 4, 2010, and provided a date-stamped copy of the report. However, the filing authority responsible for accepting the respondent's campaign finance reports stated that they had no record of the respondent's report being filed. Even if the report was filed with the filing authority on October 4, 2010, that date is after the July 2010 filing deadline. Therefore, there is credible evidence of a violation of section 254.063(b) of the Election Code.

Timely Response to Sworn Complaint

4. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice and failure to respond

to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).

5. United States Postal Service records show that the notice of this complaint was delivered on September 17, 2010. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The response to the complaint was due on October 1, 2010. The respondent filed a response to the complaint on October 29, 2010. Therefore, there is credible evidence of a violation of section 571.1242(a)(c) of the Government 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a candidate is required to file two reports for each year. 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 respondent also acknowledges that a respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. The respondent agrees to comply with these requirements of the law.

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, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$500 civil penalty no later than April 22, 2011, and agrees that if the full amount is not received by April 22, 2011, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas. The respondent further agrees to waive any right to a hearing related to this sworn complaint.

VIII. 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-31009270.

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

Lenis W. Pierce, III, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director