

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
MARSHALL M. GANDY,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-980103
	§	

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 8, 1998, to consider sworn complaint SC-980103 filed against Marshall M. Gandy (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Sections 254.031, 254.0611, and 254.063, 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, a district judge running for re-election, violated the Election Code by failing to file a complete campaign finance report due January 15, 1998. The complainant alleges that the respondent reported \$27,104 in contributions but failed to list any contributors.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, the respondent was a district judge seeking re-election in the primary election held on March 10, 1998.
2. On January 15, 1998, the respondent filed his semiannual campaign finance report which indicated that he accepted political contributions totaling \$27,104 and made political expenditures totaling \$19,790. The report included a list of itemized expenditures but did not include an itemized list of contributions.

3. The respondent filed a corrected report on January 21, 1998, which included the list of contributors. The corrected report also contained an affidavit from the respondent stating that he did not intend to violate the reporting requirements. The respondent swears that the contributor information was “omitted from the original report due to the lack of time before the original reporting date to obtain all the necessary information.” He also swears that the report was filed promptly after all information had been obtained.

IV. Conclusions of Law

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

1. A candidate is required to file semiannual reports of political contributions and expenditures. Section 254.063, Election Code.
2. The semiannual report must include the amount of political contributions from each person that exceed \$50 that are accepted during the applicable reporting period, as well as the full name and address of each person making the contribution and the date of the contribution. Section 254.031, Election Code. Additionally, judicial candidates are required to provide the contributor’s principal occupation and job title as well as the name of the contributor’s employer. Section 254.0611, Election Code.
3. The respondent did not include any contributor information in his semiannual report filed January 15, 1998. There is credible evidence that the respondent violated Sections 254.031, 254.0611, and 254.063, Election Code.
4. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report is deemed to be timely filed and no fine is assessed if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error or lack of actual knowledge concerning information included or omitted from the original report. Sections 18.49 and 18.83, Ethics Commission Rules.
5. The respondent’s statement that he had insufficient time to obtain the required contributor information does not qualify as a sufficient reason for filing a good-faith affidavit. Thus, the corrected report is late and subject to a fine.

V. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section III and the commission’s findings and conclusions of law detailed 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 and AGREED RESOLUTION 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 appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. 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 violation detailed in Section IV, Paragraph 3, 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 an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VII. Sanction

After considering the seriousness of the violation described under Section IV, Paragraph 3, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section IV, Paragraph 3.

VIII. Order

The Texas Ethics 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-980103;
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 \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 5, 1998; and
4. that the executive director shall promptly refer SC-980103 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-980103 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on: _____
DATE

Marshall M. Gandy

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director