

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MICHAEL PATRICK MCCLEARY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-260376

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 14, 2006, to consider sworn complaint SC-260376. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 254.064 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent failed to timely file his 8-day pre-election report in connection with the March 7, 2006, primary election.

III. Facts Supported by Credible Evidence

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

1. The respondent was a first time candidate for justice of the peace in the March 7, 2006, election.
2. The respondent had an opponent whose name appeared on the ballot in the election.
3. The 8-day pre-election campaign finance report was due on February 27, 2006. The respondent filed the report on March 6, 2006, one day before the election.

IV. Findings and Conclusions of Law

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

1. A candidate who has an opponent whose name is to appear on the ballot shall file a report due not later than the eighth day before election day. ELEC. CODE § 254.064(c).
2. The respondent filed his 8-day pre-election report seven days late. Therefore, there is credible evidence of a violation of section 254.064 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 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 for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file a report not later than the eighth day before election day. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation 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 \$400 civil penalty for the violation described under Sections III and IV.

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-260376.

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

Michael Patrick McCleary, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director