

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JORGE LUIS PENA,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31409192CI

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on April 8, 2016, to consider sworn complaint SC-31409192CI at a preliminary review hearing. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001 and 254.064(c) of the Election 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. Allegations

The complaint alleged that the respondent, as an opposed candidate for the Edcouch-Elsa Independent School District (EEISD) Board of Trustees, did not file a campaign treasurer appointment (CTA) and did not file pre-election campaign finance reports in connection with the November 6, 2012, election.

### III. Facts Supported by Credible Evidence

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

#### Background

1. At all times relevant to the complaint, the respondent was a candidate for the EEISD board of trustees in the November 6, 2012, election.
2. On April 14, 2014, the Commission submitted an open records request to EEISD for all campaign finance reports filed by candidates in the November 6, 2012, election and all CTAs filed after July 1, 2011. The Commission initiated this complaint after a review of campaign finance reports on record with EEISD revealed that the respondent was an opposed candidate in the November 6, 2012, election, but EEISD did not have a record of the respondent filing any campaign finance reports or a CTA. The Commission sent a second open records request to EEISD on September 26, 2014, that specifically asked by

name for all campaign finance reports and CTAs filed by the respondent. In response to the second request, EEISD provided a 30-day pre-election report filed by the respondent. In a letter, EEISD stated that it did not have an 8-day pre-election report or CTAs on file for the respondent.

3. In response to the complaint, the respondent swore that he attempted to file the required forms but was told by the EEISD business manager that he had to file the forms with the county. The respondent swore that he attempted to file the campaign finance reports with EEISD three times, but the EEISD business manager refused to accept them.
4. The EEISD business manager said during a telephone conversation that he does not have a specific recollection of the incidents the respondent described. However, he did state that other candidates were able to successfully file their reports with the EEISD, and that the EEISD would not refuse to accept reports.

### **Campaign Treasurer Appointment**

5. The complaint alleged that the respondent, as a candidate for the EEISD board of trustees in the November 6, 2012, election, did not file a CTA with EEISD.
6. On August 20, 2012, the respondent filed an application for a place on the ballot in the November 6, 2012, election. The respondent was opposed in the election.
7. According to records on file with EEISD, the respondent did not file a CTA with the EEISD business manager.

### **Filing of Campaign Finance Reports**

8. The complaint alleged that the respondent did not file the 30-day and 8-day pre-election campaign finance reports for the November 6, 2012, election in which the respondent was an opposed candidate for the EEISD board of trustees.
9. The respondent became a candidate for the EEISD board of trustees on or around August 20, 2012, when he filed his application for a place on the ballot. The respondent did not file a CTA prior to the November 2012 election, and therefore did not elect to file on the modified reporting schedule.
10. Regarding the 30-day pre-election report for the November 6, 2012, election, the respondent was required to file the report with EEISD by October 9, 2012. EEISD records indicate the respondent timely filed the 30-day pre-election report on October 9, 2012. The report covered the period from August 13, 2012, through September 27, 2012, the last day of the 30-day pre-election reporting period. In the report, the respondent disclosed \$5,000 in total political expenditures and \$0 in total political contributions.

11. Regarding the 8-day pre-election report for the November 6, 2012, election, the respondent was required to file the report with EEISD by October 29, 2012. EEISD records indicate the respondent did not file the 8-day pre-election report until the week of April 4, 2016.

#### **IV. Findings and Conclusions of Law**

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

##### **Campaign Treasurer Appointment**

1. “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. ELEC. CODE § 251.001(1).
2. An example of affirmative action is the filing of an application for a place on a ballot. *Id.* § 251.001(1)(B).
3. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
4. The respondent became a candidate for the EEISD board of trustees on or around August 20, 2012, when he filed his application for a place on the ballot. EEISD had no record that the respondent submitted a CTA prior to the November 2012 election. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

##### **Filing of Campaign Finance Reports**

5. In addition to other required reports, 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 two reports. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and 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 this chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). 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).

6. Regarding the 30-day pre-election report for the November 6, 2012, election, the respondent was an opposed candidate for the EEISD board of trustees and was required to file the report with EEISD by October 9, 2012. The respondent timely filed the 30-day pre-election report with EEISD on October 9, 2012. Therefore, there is credible evidence of no violation of section 254.064(b) of the Election Code.
7. Regarding the 8-day pre-election report for the November 6, 2012, election, the respondent was an opposed candidate for the EEISD board of trustees and was required to file the report with EEISD by October 29, 2012. The respondent did not file the report with EEISD until the week of April 4, 2016. Therefore, there is credible evidence of a violation of section 254.064(c) 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 each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. The respondent further acknowledges that in addition to other required reports, 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 two reports. 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 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 civil penalty.

**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-31409192CI.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jorge Luis Pena, Respondent

EXECUTED ORIGINAL received by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Natalia Luna Ashley, Executive Director