

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALFONSO “PONCHO” CASSO,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3190430

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

1. The respondent is Alfonso “Poncho” Casso, who was an unsuccessful non-incumbent candidate for Webb County Judge in the November 6, 2018, election. The sworn complaint was filed against the respondent on April 1, 2019.
2. The first Notice of Hearing was sent to the respondent on August 19, 2019, by United States Postal Service (USPS) certified mail and delivery confirmation. A second Notice of Hearing was sent to the respondent by certified mail and delivery confirmation on September 3, 2019. Commission staff sent the respondent notice of the changed hearing date on October 18, 2019, also by certified mail and delivery confirmation. All three notices were sent to the address provided by the complainant, which is the same address provided by the respondent in his most recent campaign finance reports.
3. The preliminary review hearing was held on November 20, 2019, by the Commission in Austin, Texas.
4. The respondent did not file a response to the notices of hearing or appear at the hearing.
5. The complaint asserted reporting violations concerning the respondent’s January and July 2018 semiannual campaign finance reports and 30-day and 8-day pre-election reports for the November 6, 2018, election, and alleged that the respondent did not file the January 2019 semiannual report. Specifically, the complaint alleged that the respondent: 1) did not file a January 2019 semiannual report, in violation of section 254.063 of the Election Code; 2) failed to include street addresses for contributions, in violation of section 254.031(a)(1) of the Election Code; 3) failed to properly report contributions from a “plate sale,” in violation of section 254.031 of the Election Code; 4) failed to include descriptions for expenditures, in violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission

- Rules; and 5) failed to notarize his 30-day pre-election report for the November 6, 2018, election, in violation of section 254.036(h) of the Election Code.
6. The respondent did not file a response to the sworn complaint. Furthermore, the respondent failed to respond to multiple calls and voicemail messages by telephone from Commission staff.
 7. The Commission shall administer and enforce, among other laws, Title 15 of the Election Code. GOV'T CODE § 571.061(a). Disposition of this case is within the jurisdiction of the Commission.
 8. 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. ETHICS COMMISSION RULES § 12.21(b).
 9. The respondent received legally sufficient notice of the November 20, 2019, preliminary review hearing in this case.
 10. 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. The November 20, 2019, preliminary review hearing was held in accordance with section 12.23 of the Ethics Commission Rules.

Failure to File January 2019 Semiannual Report

11. The complaint alleged that the respondent failed to file the January 2019 semiannual campaign finance report.
12. In response to Commission staff's request for the respondent's campaign finance reports, the Webb County Public Information Office provided all campaign finance records on file from the respondent. These records did not include a January 2019 semiannual campaign finance report, nor did they include any report designated as a final report. The records included a copy of the respondent's campaign treasurer appointment, filed December 4, 2017, and showed that the last report on file by the respondent was the 8-day pre-election report for the November 2018 election. As of the end of the reporting period for the 8-day pre-election report, the respondent reported that he maintained \$2,483.21 in political contributions.
13. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The second report shall be filed not later than January 15. The report covers the period beginning July 1, the date 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 December 31. *Id.* § 254.063(c).

14. The term “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. *Id.* § 251.001(1). Examples of affirmative action include the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
15. Because the respondent had an effective campaign treasurer appointment on file and had not filed a final report, he was a candidate and was required to file a January 2019 semiannual report. *Id.* §§ 251.001, 254.063. Records on file with the Webb County Public Information Office confirm that the respondent did not file a January 2019 semiannual report. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

Failure to Properly Disclose Complete Addresses and Contributions from “Plate Sale”

16. The complaint alleged that the respondent failed to provide a complete street address for contributions reported on the January 2018 and July 2018 semiannual reports, and the 30-day and 8-day pre-election reports for the November 6, 2018 election. The complaint further alleged that the respondent failed to disclose the identities of the actual contributors from a “plate sale” reported in his 8-day pre-election report.
17. In the 30-day pre-election report, the respondent disclosed on Schedule A1 (used to disclose monetary political contributions) one contribution of \$1,000 listing only a four-digit number for the contributor’s address and not providing a street name, city, state, or zip code. The respondent’s 30-day pre-election report further disclosed a contribution of \$300 listing only “Matamoros Laredo TX 78040” for the contributor’s address.
18. The respondent’s 8-day pre-election report included complete addresses for all contributions reported on Schedule A1 except for a \$2,280 reported contribution on October 6, 2018, where the contributor’s name was disclosed as “plate sale” and no address information was provided.
19. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1). Further, each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. *Id.* § 254.031(a)(5).
20. The respondent failed to disclose complete addresses for two contributions on the 30-day pre-election report. There is therefore credible evidence of two violations of section 254.031(a)(1) of the Election Code.

21. The complaint alleged that the respondent failed to properly disclose the individual contributions underlying the \$2,280 “plate sale” that the respondent reported on the 8-day pre-election report. Section 254.031 of the Election Code requires the disclosure of all political contributions, either as part of an unitemized total for contributions of \$50 or less, or in itemized form for contributions of more than \$50 in the aggregate from a single contributor. On his 8-day pre-election report, the respondent left the field for unitemized political contributions blank, and disclosed none of the individual contributions underlying the plate sale individually. There is therefore credible evidence of violations of section 254.031 of the Election Code.
22. The respondent’s January and July 2018 semiannual reports included complete addresses for all reported contributions, and the complaint did not provide evidence or allege facts to indicate that the address information disclosed by the respondent was incorrect. Regarding the January 2018 semiannual report, the respondent itemized one contribution of \$1,250 from a political committee and provided a correct P.O. Box address for the committee, as verified by the committee’s website. The complaint alleged that the respondent was required to provide a street address for the contributor. The law does not require a report to include the contributor’s physical street address. *See id.* § 254.031(a)(1) (requiring only the contributor’s “address,” not specifying that a street address is required). There is therefore no credible evidence of contributor address violations in these reports.

Failure to Disclose Descriptions for Expenditures

23. The complaint alleged that the respondent failed to include descriptions for expenditures on the January 2018 and July 2018 semiannual reports and the 30-day and 8-day pre-election reports for the November 2018 election.
24. The respondent did not include “a brief statement or description of the candidate activity” for any of the campaign expenditures he reported on Schedule F1 (used to disclose political expenditures from political contributions) of the reports at issue. The respondent’s January 2018 semiannual report included one expenditure of \$1,250.00; his July 2018 semiannual report, 16 expenditures totaling \$433.04; his 30-day pre-election report, 31 expenditures totaling \$2,616.60; and his 8-day pre-election report, 27 expenditures totaling \$1,865.76. While the respondent did provide a category for each expenditure, he listed the specific candidate activity for none of the above-described expenditures, leaving the description field blank.
25. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3). The purpose of an expenditure means the category of goods, services, or other thing of value for which an expenditure is made, and a brief statement or description of the candidate activity that is conducted by making the expenditure. ETHICS COMMISSION RULES § 20.61(a).

26. Because the respondent left the description field blank for the above-listed expenditures, failing to list the specific candidate activity for which the expenditures were made, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules.

Failure to Execute Report Affidavit

27. The complaint further alleges that the respondent failed to execute the affidavit on his 30-day pre-election report. The respondent signed the report but did not have the report notarized.
28. Each report filed under Chapter 254 of the Election Code that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: "I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code." ELEC. CODE § 254.036(h).
29. The portion of the signature block provided for the notary's seal and signature on the 30-day pre-election report is blank, and no notary seal or signature is present anywhere else on the report. There is therefore credible evidence of a violation of section 254.036(h) of the Election Code.

Failure to Respond to the Sworn Complaint

30. Sworn complaint SC-3190430 was filed on April 1, 2019. Commission staff attempted to notify the respondent of the complaint by telephone on April 1 and again on April 5 at the number that the respondent provided on his last campaign finance filing, his 8-day pre-election report, filed on October 29, 2018. The respondent did not answer, so Commission staff left voicemail messages, which the respondent did not return. On April 8, 2019, the Commission sent a notice of the sworn complaint to the respondent by certified mail, restricted delivery, return receipt requested, at the address provided by the complainant on the sworn complaint form, which was also the address reported on the respondent's most recent campaign finance filings. According to USPS tracking records, USPS attempted delivery on April 10, 2019, and left a notice slip because "no authorized recipient [was] available." The notice was not picked up, and was returned to the Commission.
31. The Commission sent a second notice of the complaint to the same address by delivery confirmation on April 25, 2019. Tracking records show that USPS delivered this second notice on April 27, 2019. This notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, 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.

32. Based on the delivery date of the second notice, the respondent was required to respond to the sworn complaint by May 10, 2019.
33. Commission staff left further voicemail messages at the respondent's telephone number from his last campaign filing on May 15, August 16, and October 2, 2019. The respondent returned none of these voicemail messages. Wishing to reach an agreed resolution, Commission staff also sent the respondent a proposed agreed order on August 6, 2019, to which the respondent did not reply. As noted above, the Commission sent notices of the preliminary review hearing to the respondent, to which the respondent has not replied either.
34. Therefore, the respondent has not responded to the sworn complaint or to any of Commission staff's extensive efforts to contact the respondent.
35. 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. ETHICS COMMISSION RULES § 12.21(b).
36. The respondent did not file a response to the complaint, despite receiving notice from the Commission that the allegations were Category One violations and that he was required to respond within 10 business days under section 571.1242(a) 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.

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. 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 and the need to ensure deterrence of future violations are relevant to the appropriate penalty for this sworn complaint. In particular, the respondent's complete failure to participate in the sworn complaint process and the need to deter future violations by the respondent in light of the respondent's apparent

indifference are factors that the Commission considers in assessing the civil penalty. *See id.*

4. Therefore, the Texas Ethics 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 \$2,500. If the respondent does not pay the \$2,500 civil penalty within 30 days of the date of this order, then 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

Anne Temple Peters
Executive Director
Texas Ethics Commission