

6. The Respondent filed a campaign treasurer appointment (CTA) on September 5, 2019, and did not elect modified reporting.
7. The Respondent was required to file the 30-day pre-election report by February 3, 2020. Records on file with Bexar County show that the Respondent filed the report late on February 25, 2020. The report disclosed \$0 in total political contributions, \$0 in total political expenditures, and a \$60,000 personal loan the Respondent made to his campaign.
8. The Respondent was also required to file the 8-day pre-election report by February 24, 2020. Records on file with Bexar County show the Respondent filed the report late on February 25, 2020. The report disclosed \$0 in total political contributions and \$9,437.38 in total political expenditures.
9. The Respondent did not file a response to the sworn complaints.
10. 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. Tex. 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. The report 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 Chapter 254, 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 8th 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).
11. The 30th day before the March 3, 2020, primary election was February 3, 2020. As an opposed candidate not filing on the modified reporting schedule, the Respondent was required to file a 30-day pre-election report by February 3, 2020. Bexar County records show the Respondent filed the report on February 25, 2020, 22-days late. Therefore, there is credible evidence of a violation of Section 254.064(b) of the Election Code.
12. The 8th day before the March 3, 2020, primary election was February 24, 2020. As an opposed candidate not filing on the modified reporting schedule, the Respondent was required to file an 8-day pre-election report by February 24, 2020. Bexar County records show the Respondent filed the report on February 25, 2020, one-day late. Therefore, there is credible evidence of a violation of Section 254.064(c) of the Election Code.

Failure to Respond to the Sworn Complaints

13. SC-3200255 was submitted on February 14, 2020. On February 14, 2020, Commission staff attempted to contact the Respondent at the number provided in the sworn complaint and left

a message. On February 19, 2020, Commission staff was able to locate an additional telephone number for the Respondent and left a message. The Respondent returned the telephone call. Commission staff notified him about the complaint and that it was under review. In that same conversation, the Respondent verified his mailing address. On February 24, 2020, the complaint was returned to the Complainant for non-compliance. The complaint was resubmitted on March 3, 2020, and the Commission attempted to contact the Respondent to notify him about the resubmission but was only able to leave messages. The Commission accepted jurisdiction over the complaint on March 10, 2020. The Commission sent a notice of the sworn complaint to the Respondent by certified mail, return receipt requested, to the address that was verified by the Respondent over the telephone and disclosed on his campaign finance reports and his CTA. According to the United States Postal Service's (USPS) tracking records, the notice was suspended in transit.

14. The Commission sent a second notice to the same address by delivery confirmation on April 2, 2020. Tracking records show that USPS delivered this second notice on April 4, 2020. This notice informed the Respondent that the alleged violation in SC-3200255 was a Category One violation, 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.
15. Based on the delivery date of the second notice, the Respondent was required to respond to SC-3200255 by April 17, 2020.
16. SC-3200389 was submitted on March 12, 2020. That same day, Commission staff attempted to contact the Respondent by telephone to notify him of the complaint. Commission staff left messages but the Respondent never responded to any telephone messages. The Commission accepted jurisdiction over the complaint on March 16, 2020. The Commission sent a notice of the sworn complaint to the Respondent by certified mail, return receipt requested, to the address that was verified by the Respondent over the telephone in connection with SC-3200255, which is also the same address that was disclosed on his campaign finance reports and CTA. The notice was sent back to the Commission as 'unclaimed' on April 20, 2020.
17. The Commission sent a second notice to the same address by delivery confirmation on April 21, 2020. Tracking records show that USPS delivered this second notice on April 23, 2020. This notice informed the Respondent that the alleged violation in SC-3200389 was a Category One violation, 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.
18. Based on the delivery date of the second notice, the Respondent was required to respond to SC-3200389 by May 7, 2020.

19. The Respondent did not submit a response to either sworn complaint. Commission staff sent a reminder notice to the Respondent to the same address verified by the Respondent by delivery confirmation on May 13, 2020. USPS tracking records show that the reminder notice was delivered on May 15, 2020. The reminder notice informed the Respondent that the alleged violations in the sworn complaints were Category One violations. The notice also informed the Respondent that the Commission did not receive his response to either sworn complaint. The Respondent was notified that his failure to respond to the sworn complaints constituted separate Category One violations. To avoid additional penalties, the Respondent was requested to submit his response to the sworn complaints by May 26, 2020.
20. On July 9, 2020, Commission staff sent the Respondent a proposed resolution in an attempt to resolve the complaints. The resolution was mailed to the Respondent by certified mail, return receipt requested, and delivery confirmation. The letter accompanying the proposed resolution noted that the proposed civil penalty was based largely on the Respondent's failure to submit a response to the complaints. The letter also stated that, if the Respondent did not agree to the resolution and wished to submit a response to the complaints, then he must do so by July 24, 2020, or the complaints would be scheduled for a preliminary review hearing. The Respondent did not respond to the proposed resolution.
21. 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. 1 Tex. Admin. Code § 12.21(b).
22. If an alleged violation is a Category One violation, a respondent must respond to the notice required by Section 571.123(b) of the Government Code not later than the 10th business day after the date the respondent receives the notice. Tex. Gov't Code § 571.1242(a). A respondent's failure to timely respond as required by Subsection (a) is a Category One violation. *Id.* § 571.1242(c). The response required by Subsection (a) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may: (1) acknowledge the occurrence or commission of a violation; (2) deny the allegations contained in the complaint and provide evidence supporting the denial; or (3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist. *Id.* § 571.1242(d).
23. The Respondent did not file a response to the complaints, despite receiving multiple notices 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 separate Category One violation, there is credible evidence of violations of Section 571.1242 of the Government Code.

III. Default Judgment

1. The preliminary review hearing was held remotely by video teleconference on September 14, 2020, at 1:15 p.m.
2. 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. 1 Tex. Admin. Code § 12.21(b).
3. 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.
4. The first notice of hearing was sent to the Respondent on July 31, 2020, by USPS certified mail, return receipt requested, and delivery confirmation. The notice stated that the hearing would be held on September 14, 2020, at 1:15 p.m. by video teleconference. The notice also stated that if the Respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. On August 4, 2020, Commission staff spoke with the Respondent by telephone and explained the sworn complaint process, reminded him that his response to the complaints was late and still required, and that the complaints were set for a hearing. Following this conversation, Commission staff sent an email to the email addresses provided by the Respondent re-iterating that he was required to respond to the complaints and that the complaints had been set for a hearing.
5. A second notice of hearing was sent to the Respondent on August 14, 2020, by email, USPS certified mail, return receipt requested, and delivery confirmation. Like the first notice, this notice also stated that the hearing would be held on September 14, 2020, at 1:15 p.m. by video teleconference. On August 26, 2020, Commission staff received a telephone call from the Respondent. Commission staff once again notified the Respondent that his response to the complaints was required and that the complaints were currently set for a hearing on September 14, 2020, at 1:15 p.m. All notices were sent to the email and/or mailing addresses provided to the Commission by the Respondent when Commission staff notified him by telephone of SC-3200255, and the same mailing address that the Respondent listed on his campaign treasurer appointment and campaign finance reports. The Respondent's last known mailing address is 10130 San Pedro Avenue, #102, San Antonio, Texas, 78216-3866.
6. The Commission finds that the Respondent received legally sufficient notice of the sworn complaints and the September 14, 2020, preliminary review hearing in these cases. The Respondent did not respond to the notices of hearing or appear at the hearing, despite multiple notices from the Commission and attempts by Commission staff to communicate with the Respondent and resolve the complaints. The Commission proceeded in the

Respondent's absence and issued this final order in accordance with Section 12.23 of the Texas Administrative Code. By failing to appear at the preliminary review hearing, the Respondent forfeited his right to further proceedings before the Commission in these matters. This final order is a final and complete resolution of these complaints before the Commission, except for the issue of collection of the civil penalty.

7. The Commission finds credible evidence of violations of Section 254.064 of the Election Code and Section 571.1242 of the Government Code.

IV. 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. Tex. 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 is relevant to the appropriate penalty for this sworn complaint. In particular, the respondent's failure to participate in the preliminary review hearing, and failure to participate in the sworn complaint process 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 civil penalty is increased to \$5,000 and 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