

CK#1184
Amt. \$1,250.⁰⁰
Receipt# SC 09032103
Pymt Rec'd 8-30-2021

TEXAS ETHICS COMMISSION

5TH

IN THE MATTER OF

DELIA PARKER-MIMS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32010221



ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on August 31, 2021, to consider sworn complaint SC-32010221. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.064, 255.001, and 255.004 of the Election Code, and Section 12.83(a) of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) failed to include in political advertisements political advertising disclosure statements correctly identifying the person who paid for or authorized the political advertisements, in violation of Section 255.001 of the Election Code; 2) entered into a contract or other agreement to print, publish, or broadcast political advertising that purported to emanate from a source other than its true source, or, with intent to injure a candidate or influence the outcome of an election, knowingly represented in a campaign communication that the communication emanated from a source other than its true source, namely by representing in political advertisements or campaign communications that the political advertisements or campaign communications were paid for or authorized by the "Better Together, DC" political committee, in violation of Section 255.004 of the Election Code; and 3) failed to file a 30-day pre-election report for the November 3, 2020 election, in violation of Section 254.064 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was an unsuccessful opposed non-incumbent candidate for Denton County Commissioner in the November 3, 2020 election.

Failure to File 30-Day Pre-election Report

2. The sworn complaint alleges that the respondent failed to file a 30-day pre-election report for the November 3, 2020 election.
3. 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 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 this chapter, as applicable, and continuing through the 40th day before election day. Tex. Elec. Code § 254.064.
4. The respondent had an opponent for county commissioner whose name appeared on the ballot. The respondent's campaign treasurer appointment, filed on January 30, 2019, did not include a declaration of modified reporting.
5. The respondent was required to file the 30-day pre-election campaign finance report by October 5, 2020. The campaign finance records posted on Denton County's website indicate that the respondent filed her 30-day pre-election campaign finance report on October 20, 2020, five days after the sworn complaint was filed. On this campaign finance report, the respondent reported \$15,078.14 in political contributions accepted and \$11,028.58 in political expenditures made. In her response to the complaint, the respondent admitted that she failed to timely file the 30-day pre-election report. The respondent further explained that "her error was made out of ignorance and was rectified as soon as was practical." The evidence shows the respondent filed the 30-day pre-election report 15 days late. There is therefore credible evidence of a violation of Section 254.064 of the Election Code.

Political Advertising Disclosure Statement

6. Concerning the respondent's political advertisements, the sworn complaint alleges that the respondent failed to include disclosure statements correctly identifying the person who paid for or authorized the political advertisements. At issue in the complaint are door hangers, a vertical campaign banner, a campaign graphic resembling a yard sign, and a campaign Facebook page, each of which contain a political advertising disclosure statement indicating the advertisements were paid for by "Better Together, DC." Also at issue are the respondent's campaign website and her horizontal campaign banners, which the complaint alleges fail to include any political advertising disclosure statement at all.

7. The respondent's vertical campaign banner, as depicted in a photograph included with the complaint, and her door hangers, bear a political advertising disclosure statement reading "Political Advertisement [or 'Pol. Ad.'] Paid For by Better Together, DC." The respondent created a specific-purpose political committee called "Better Together Denton County (DC)" by filing a campaign treasurer appointment with the Denton County clerk in April 2019. However, in September 2019, the "Better Together Denton County (DC)" political committee filed an affidavit of dissolution with the filing authority without having disclosed any activity.
8. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. Tex. Elec. Code § 255.001(a). Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under Title 15 of the Election Code shall be deemed to contain express advocacy. *Id.* § 255.001(b). A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). *Id.* § 255.001(c). The requirement that all political advertising include a political advertising disclosure statement does not apply to circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. *Id.* § 255.001(d)(3).
9. While Section 255.001's requirement that all political advertising include a political advertising disclosure statement does not apply to circulars or flyers that cost in the aggregate less than \$500 to publish and distribute, the respondent did not claim in her response to the sworn complaint that the door hangers cost less than \$500 to publish and distribute. *See* Tex. Elec. Code § 255.001(d)(3). Commission staff sent written questions to the respondent inquiring how much she paid for the door hangers, among other questions, but the respondent failed to respond to the written questions. On her 30-day and 8-day pre-election reports, the respondent disclosed \$8,082.91 in political expenditures to "Prodigi," an online printing service, and on her 8-day pre-election report, she disclosed \$339.50 in expenditures to a "USPS kiosk" that she described as "[p]ostage for [a] mailer" or "[p]ostage for mailers." The respondent's substantial expenditures for printing and mailing suggest that she paid more than \$500 to publish and distribute the door hangers.
10. In her initial response to the complaint, the respondent tacitly admitted to authorizing the communications at issue, but contended that she appropriately listed "Better Together, DC" as the name of her campaign in the disclosure statements. The respondent attached to her response an assumed name certificate filed with the Denton County clerk in 2016, in which she represented that "Better Together DC" was the name under which she conducted

business as an individual. The respondent cites the Code Construction Act for the proposition that the term “person” may include a “corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity,” and argues that by including a political advertising disclosure statement referring to “Better Together, DC,” she provided the “full name” of the person who paid for the advertising. Tex. Gov’t Code § 311.005; *see* Tex. Elec. Code § 255.001(a). However, an assumed name or “DBA” is not a legal entity. *Kahn v. Imperial Airport, L.P.*, 308 S.W.3d 432, 438 (Tex. App.—Dallas 2010, no pet.) (“A DBA is no more than an assumed or trade name. And it is well-settled that a trade name has no legal existence.”) (citing *Davis v. Raney Auto Co.*, 249 S.W. 878, 878 (Tex. Civ. App.—Texarkana 1923, no writ)). The section of the Code Construction Act that the respondent relies upon is therefore inapplicable.

11. Further, the respondent’s argument elides the significant distinction between a person or entity’s *assumed* name and its *actual* name. Texas courts have long recognized this distinction in the agency context. *See, e.g., Burch v. Hancock*, 56 S.W.3d 257, 263-64 (Tex. App.—Tyler 2001, no pet.) (holding that agent was required to disclose principal corporation’s actual name to escape personal liability despite circumstances indicating that the agent was acting under the corporation’s assumed name); *A to Z Rental Center v. Burris*, 714 S.W.2d 433, 437 (Tex. App.—Austin 1986, writ ref’d n.r.e.) (observing that “an agent has the duty to disclose *the name* of his principal, not just the principal’s assumed or trade name”). While the Texas Assumed Business or Professional Name Act requires that a person file a certificate disclosing any *assumed* names under which a person does business, there is nowhere in the text of the Act any indication that an assumed name disclosed under the Act is the name of the associated natural person for purposes of Title 15 of the Texas Election Code or any other system of official disclosure under state law. *See* Tex. Bus. & Comm. Code § 71.051. Nor does Title 15 of the Election Code provide any mechanism by which a filer can substitute an assumed name for the actual name given in their disclosure filings. There is therefore credible evidence of violations of Section 255.001 of the Election Code for the respondent’s failure to include her full name in the disclosure statement on the door hangers and vertical campaign banner.
12. The sworn complaint alleges that the respondent violated Section 255.001 by failing to include the required political advertising disclosure statement on her campaign website. Because the respondent’s campaign website, which she does not deny authorizing, plainly supports the respondent’s campaign for county commissioner, it is political advertising containing express advocacy that is required to contain a political advertising disclosure statement. *See* Tex. Elec. Code § 255.001(b) (“Political advertising that is authorized by a candidate . . . shall be deemed to contain express advocacy.”). The campaign website does not contain any political advertising disclosure statement. There is therefore credible evidence of a violation of Section 255.001 of the Election Code regarding the respondent’s campaign website.

13. There is no credible evidence that the respondent violated Section 255.001 by failing to include an appropriate political advertising disclosure statement on her Facebook page because no political advertising disclosure statement was required. Section 26.1(c)(3) of the Ethics Commission Rules provides that a political advertising disclosure statement is not required on the Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder. The respondent's campaign Facebook page prominently displays her full name at the top of the page, and therefore complies with Section 26.1(c)(3) of the Ethics Commission Rules and Section 255.001 of the Election Code. There is therefore credible evidence of no violation of Section 255.001 of the Election Code regarding the respondent's campaign Facebook page.
14. The sworn complaint alleges that the respondent failed to include the required political advertising disclosure statement in a digital graphic that appears to be designed to be printed on yard signs. The complaint further alleges that the respondent failed to include the political advertising disclosure statement on horizontal banners being erected by volunteers in a photograph the respondent allegedly posted on Facebook. Section 255.001 of the Election Code applies only to political advertising, which Section 251.001(16) defines as certain communications that are published in, or appear in, statutorily-specified forms of communication, such as signs, newspapers, or Internet websites. The complaint fails to demonstrate that the digital graphic of a yard sign was published or distributed, either on the Internet or in physical form, and includes only a digital image of the design allegedly printed on the sign. The complaint therefore fails to indicate that the purported yard sign even qualifies as political advertising subject to Section 255.001's disclosure requirement. Further, of the horizontal banners, the complaint does not include an image of sufficient size or resolution to discern whether a political advertising disclosure statement was included, much less what the text of any included political advertising disclosure statement was. There is therefore insufficient credible evidence of a violation of Section 255.001 of the Election Code as to these communications.

True Source of Campaign Communications

15. The sworn complaint alleges that the respondent entered into a contract or other agreement to print, publish, or broadcast political advertising that purported to emanate from a source other than its true source, or, with intent to injure a candidate or influence the outcome of an election, knowingly represented in a campaign communication that the communication emanated from a source other than its true source, by representing in political advertisements or campaign communications that the political advertisements or campaign communications were paid for or authorized by the "Better Together, DC" political committee.

16. As discussed above, the respondent included in campaign communications, including her door hangers, her Facebook page, and at least one vertical campaign banner, political advertising disclosure statements indicating that the communications were paid for by “Better Together, DC,” which the respondent had disclosed as her assumed name in a filing with the Denton County clerk.
17. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. Tex. Elec. Code § 255.004(a). A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
18. “Campaign communication” means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. *Id.* § 251.001(17).
19. In order to violate Section 255.004, the respondent must have knowingly represented that her Facebook page emanated from a source other than its true source. *Id.* § 255.004(b). The respondent was aware of the content of her own Facebook page, which included the statement that it was paid for by “Better Together, DC.” The name “Better Together, DC” implies a group or entity that is not the respondent individually. Although there does not appear to be a malicious intent to mislead, the respondent nevertheless represented that the communications appearing on her Facebook page emanated from a source other than their true source. There is therefore credible evidence of a violation of Section 255.004 of the Election Code with respect to the Facebook page.
20. The respondent’s door hangers and vertical campaign banner, however, are glossy, professional-looking products, likely manufactured by a print shop. Further, as noted above, the respondent reported substantial expenditures for both printing and mailing on her pre-election campaign finance reports. The banner and the door hangers both display the respondent’s name prominently, declare her candidacy for county commissioner, and contain promotional language such as the declaration on the banner that “[t]ogether [w]e [f]ight to bring the progressive change that will strengthen our community,” and the prominently-displayed text on the door hangers that refers to the respondent as “a powerful voice for the people.” Further, these publications contain the disclosure language “political advertisement paid for by Better Together, DC,” or an abbreviation of that language. As noted above, despite the assumed name certificate filed by the respondent, “Better Together, DC” is not the respondent’s actual name and implies a group or entity that is not the respondent individually. The evidence therefore indicates that, with intent to influence the outcome of an election, the respondent entered into a contract or other agreement to print or

publish the banner and the door hangers, which purport to emanate from a source other than their true source. There is therefore credible evidence of violations of Section 255.004(a) of the Election Code as to the banner and the door hangers.

21. As noted above, the complaint includes insufficient evidence that the digital graphic for a yard sign, for which the complaint provides a digital image of the design and no further contextual information, qualifies as political advertising or a campaign communication. Subsections 255.004(a) and 255.004(b) of the Election Code respectively apply only to political advertising and to campaign communications. There is insufficient evidence to conclude that the digital graphic was ever published or otherwise distributed. There is therefore insufficient evidence of any violation of Section 255.004 of the Election Code as to this digital graphic.

Failure to Respond to Written Questions

22. Because the respondent's initial responses to the sworn complaint did not sufficiently address the allegations, Commission staff sent written questions and requests for production to the respondent's attorney on March 3, 2021. In the letter containing the written questions and requests for production, Commission staff stated that the respondent was required to respond to the written questions not later than 15 business days after receiving the letter, and provide the requested documents not later than 30 days after receiving the letter, and that failure to respond to the written questions would constitute a separate violation for which a civil penalty may be imposed.
23. On March 15, 2021, the respondent's attorney emailed Commission staff to request a 30-day extension of time to respond to the written questions and requests for production. The extension request was granted pursuant to Section 571.136 of the Government Code and Section 12.27 of the Ethics Commission Rules and the respondent was given until April 23, 2021, to respond to the written questions and requests for production.
24. On April 26, 2021, Commission staff emailed the respondent's attorney to inquire about the responses to the written questions and requests for production, which the Commission had not yet received. The respondent's attorney replied that he had thought the deadline was April 30, and asked if he could have a second extension "[until] June." The respondent's attorney stated that he was very busy because the Legislature was in session. The respondent's attorney is chief of staff for a state legislator. The respondent's attorney was provided a second extension of the response deadline for the written questions and requests for production, to June 9, 2021. The respondent's attorney was notified that further extensions would not be granted "absent extraordinary circumstances."

25. On June 11 and again on June 14, Commission staff emailed the respondent's attorney to ask why he had not filed responses to the written questions and requests for production by the June 9 deadline. In the June 14 email, Commission staff warned that unless the respondent's attorney filed the responses soon, Commission staff would be forced to propose a resolution "finding an additional violation and assessing an additional civil penalty" for failure to respond to the written questions and requests for production. The respondent's attorney replied on June 15 that he would "try to get [Commission staff]" the responses within the "next few days."
26. As of July 14, 2021, Commission staff still had not received the responses to the written questions and requests for production.
27. During a preliminary review, the Commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. Tex. Gov't Code § 571.1242(f). A complainant or respondent must respond to written questions not later than 15 business days after receiving the written questions. 1 Tex. Admin. Code § 12.83(a). The executive director may grant an extension of the time period for good cause shown. *Id.*
28. The Commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing. Tex. Gov't Code § 571.136. The executive director may extend a deadline pursuant to Section 571.136 of the Government Code. 1 Tex. Admin. Code § 12.27.
29. 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.
30. Despite the fact that the Commission twice extended the deadline for responses to the written questions and requests for production, the respondent still has not filed the required responses. There is therefore credible evidence of a violation of Section 12.83(a) of the Ethics Commission Rules for the respondent's failure to respond to written questions.

IV. 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 Commission's findings of fact and conclusions of law described under Section III, and consents to the entry of this order and agreed resolution solely for the purpose of resolving the 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 political advertising containing express advocacy must include in the political advertising disclosure statement the full, actual name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. The respondent further acknowledges that an assumed name ("DBA") of the natural person who paid for the advertising is not sufficient to satisfy this requirement.
4. The respondent acknowledges that a person may not, with intent to injure a candidate or influence the result of an election, knowingly represent in a campaign communication that the communication emanates from a source other than its true source.
5. The respondent 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 first of these reports must be received by the authority with whom the report is required to be filed not later than the 30th day before election day.
6. The respondent further acknowledges that a respondent must respond to Commission staff's written questions not later than 15 business days after receiving the written questions, and must respond to requests for documents within the time specified by Commission staff in accordance with Section 12.28 of the Ethics Commission Rules.
7. The respondent agrees to fully and strictly comply with the above requirements of law.

V. Confidentiality

This order and agreed resolution describes certain 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,250 civil penalty. If the \$1,250 civil penalty is not paid within 30 days after the date

this order is executed, then the civil penalty increases to \$2,500 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

VII. 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 sworn complaint SC-32010221.

AGREED to by the respondent on this 19th day of July, 2021.



Delia Parker-Mims, Respondent

EXECUTED by the Commission on: September 3, 2021

Texas Ethics Commission

By: /s/ Anne Temple Peters
Anne Temple Peters, Executive Director