

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SHARON KELLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290354

FINAL ORDER

I. Findings of Fact

1. The complaint was filed on March 31, 2009.
2. The respondent is Presiding Judge of the Texas Court of Criminal Appeals. The respondent was first elected to the Court of Criminal Appeals in 1994, and has served as Presiding Judge of that court since 2000.
3. The complaint alleged that the respondent failed to disclose required information in personal financial statements filed from 2004 through 2008.
4. The commission held a preliminary review hearing on December 2, 2009, and determined that there was credible evidence of violations of section 572.023 of the Government Code, a law administered and enforced by the commission. The respondent waived the right to further proceedings before the commission and requested that the commission issue a final order. The commission met on April 21, 2010, and adopted this final order.
5. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for a violation of section 572.023 of the Government Code is a Class B misdemeanor. GOV'T CODE § 572.034. The statute of limitations for a Class B misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Allegations relating to information that was required to be disclosed in a personal financial statement (PFS) due before March 31, 2007 (more than two years before the complaint's hand-delivery date), were not within the commission's sworn complaint jurisdiction. Therefore, the allegations relating to the PFSs due in 2004, 2005, and 2006 were not considered. The PFSs filed in 2007 and 2008 were within the commission's sworn complaint jurisdiction.

Personal Financial Statements Filed in 2007 and 2008

6. On April 24, 2007, the respondent filed her original PFS covering calendar year 2006. On the statement's cover page, the respondent disclosed that she was also reporting the financial

activity of a dependent child. Part 1A (used for reporting sources of occupational income) disclosed two sources of occupational income. Part 2 (used for reporting stock) disclosed that the respondent held between 100 and 499 shares of stock in one business, and did not disclose that the respondent sold any stock. Part 5 (used for reporting income from interest, dividends, royalties, and rents) disclosed eight sources of income from interest, dividends, royalties, and rents that the respondent or her dependent child received that were in excess of \$500. Part 7A (used for reporting interests in real property) disclosed three interests in real property, including one property in Travis County listed by a lot description. Part 7A did not disclose that any properties were sold. Part 9 (used for reporting trust income) disclosed over \$25,000 in income received as beneficiary of one trust. Part 12 (used for reporting boards and executive positions) disclosed that the respondent was an executive board member of two organizations. The respondent checked the "not applicable" box on every other part of the statement.

7. On April 29, 2008, the respondent filed her original PFS covering calendar year 2007. On the statement's cover page, the respondent disclosed that she was also reporting the financial activity of a dependent child. Part 1A disclosed two sources of occupational income. Part 2 disclosed that the respondent held between 100 and 499 shares of stock in one business, and did not disclose that the respondent sold any stock. Part 5 disclosed eight sources of income from interest, dividends, royalties, and rents that the respondent or her dependent child received that were in excess of \$500. Part 7A disclosed three interests in real property, including one property in Travis County listed by a lot description. Part 7A did not disclose that any properties were sold. Part 9 disclosed over \$25,000 in income received as beneficiary of one trust. Part 12 disclosed that the respondent was an executive board member of two organizations. The respondent checked the "not applicable" box on every other part of the statement.

Corrections to Personal Financial Statements Filed in 2007 and 2008

8. On April 28, 2009, after receiving notice of the sworn complaint allegations, the respondent filed a corrected PFS covering calendar year 2006 (filed in 2007) and a corrected PFS covering calendar year 2007 (filed in 2008).
9. The respondent's corrected PFS covering calendar year 2006 included the following explanation of correction:

The purpose of this correction is to include various properties, the income from these properties, and certificates of deposit that I did not report earlier. My father, Jack Keller, over a number of years, has acquired and managed, without input from me, all of these properties.

The statement's cover page did not disclose that the respondent was reporting financial activity of a spouse or dependent child. Part 1A disclosed one source of occupational

income, which was included in the original statement. Part 1A did not disclose the other source of occupational income that was disclosed in the original statement. Part 2 disclosed that the respondent held between 100 and 499 shares of stock in one business, which was disclosed in the original statement, and that the respondent held between 100 and 499 shares of stock in a second business, which was not disclosed in the original statement. Part 2 did not disclose that the respondent sold any stock. Part 3 (used for reporting bonds, notes, and other commercial paper) disclosed that the respondent held one “note,” one money market account, and 20 certificates of deposit. The respondent did not disclose any of the instruments in Part 3 in her original statement, and the respondent did not disclose that any of the instruments in Part 3 were sold. In Part 5, the respondent disclosed three sources of income that were disclosed in her original statement,¹ and eight sources of income that were not disclosed in her original statement. The amount of income received from the eight previously undisclosed sources of income from interest, dividends, royalties, and rents was at least \$61,500.² Part 7A included two interests in real property that were disclosed in the respondent’s original PFS,³ and eight interests in real property that were not disclosed in the respondent’s original PFS.⁴ Part 7A did not disclose one property that was disclosed in the original statement, and Part 7A did not disclose that any properties were sold. Part 7B (used for reporting interests in business entities) disclosed that the respondent held a beneficial interest in one business entity, and did not disclose that the interest was sold. In her original PFS, the respondent did not disclose any business entities in Part 7B. Part 9 disclosed no income received as beneficiary of a trust. The respondent’s original PFS disclosed one trust in Part 9. In Part 12, the respondent disclosed the two previously disclosed board positions, as well as five previously undisclosed board or executive positions. In Part 13 (expenses accepted under honorarium exception), the respondent disclosed one expense of \$2,076.01

¹ In her original PFS, the respondent listed the same bank as a source of income in two entries. The respondent disclosed that she received between \$10,000 and \$24,999 in income from a bank, and, as a separate entry, that her dependent child received between \$10,000 and \$24,999 in income from a bank. In her corrected PFS, the respondent disclosed the same bank as a single entry, and disclosed that she received \$25,000 or more from the bank.

² Income disclosed in Part 5 of the PFS is reported by category of the amount of income received. The four categories of income amounts are: \$500 - \$4,999, \$5,000 - \$9,999, \$10,000 - \$24,999, and \$25,000 or more. Therefore, it is impossible to determine from the face of the PFS the actual amount of income received in excess of \$500 that was derived from interest, dividends, royalties, and rents.

³ The corrected PFS listed a Travis County property by street address, whereas the original report listed the property by lot description.

⁴ The respondent disclosed two street addresses in one entry in Part 7A, and disclosed two persons (other than the respondent) retaining an interest in the properties. Although the same street was disclosed for both addresses, for purposes of this final order, each street address is treated as a separate interest in property. Also, two additional properties that were previously undisclosed indicated that the respondent held a one-fourth undivided interest in the properties and named three persons (other than the respondent) retaining an interest in the properties.

from a law school, and one expense of \$1,681.27 from the Council of State Governments Justice Center. The respondent's original PFS did not disclose any expenses in Part 13.

10. The respondent's corrected PFS covering calendar year 2007 included the following explanation of correction:

The purpose of this correction is to include various properties, the income from these properties, and certificates of deposit that I did not report earlier. My father, Jack Keller, over a number of years, has acquired and managed, without input from me, all of these properties.

The statement's cover page did not disclose that the respondent was reporting financial activity of a spouse or dependent child. Part 1A disclosed one source of occupational income, which was included in the original statement. Part 1A did not disclose the other source of occupational income that was disclosed in the original statement. Part 2 disclosed that the respondent held between 100 and 499 shares of stock in one business, which was disclosed in the original statement, and that the respondent held between 100 and 499 shares of stock in a second business, which was not disclosed in the original statement. Part 2 did not disclose that the respondent sold any stock. Part 3 disclosed that the respondent held two "note[s]," one money market account, and 22 certificates of deposit. The respondent did not disclose any of the instruments in Part 3 in her original statement, and the respondent did not disclose that any of the instruments in Part 3 were sold. In Part 5, the respondent disclosed three sources of income that were disclosed in her original statement,⁵ and nine sources of income that were not disclosed in her original statement. The amount of income received from the nine previously undisclosed sources of income from interest, dividends, royalties, and rents was at least \$121,500. Part 7A included two interests in real property that were disclosed in the respondent's original PFS,⁶ and eight interests in real property that were not disclosed in the respondent's original PFS.⁷ Part 7A did not disclose one property that was disclosed in the original statement, and Part 7A did not disclose that any properties were

⁵ In her original PFS, the respondent listed the same bank as a source of income in two entries. The respondent disclosed that she received between \$10,000 and \$24,999 in income from a bank, and, as a separate entry, that her dependent child received between \$10,000 and \$24,999 in income from a bank. In her corrected PFS, the respondent disclosed the same bank as a single entry, and disclosed that she received \$25,000 or more from the bank.

⁶ The corrected PFS listed a Travis County property by street address, whereas the original report listed the property by lot description.

⁷ The respondent disclosed two street addresses in one entry in Part 7A, and disclosed two persons (other than the respondent) retaining an interest in the properties. Although the same street was disclosed for both addresses, for purposes of this final order, each street address is treated as a separate interest in property. Also, two additional properties that were previously undisclosed indicated that the respondent held a one-fourth undivided interest in the properties and named three persons (other than the respondent) retaining an interest in the properties.

sold. Part 7B disclosed that the respondent held a beneficial interest in one business entity, and did not disclose that the interest was sold. In her original PFS, the respondent did not disclose any business entities in Part 7B. Part 9 disclosed no income received as beneficiary of a trust. The respondent's original PFS disclosed one trust in Part 9. In Part 12, the respondent disclosed the two previously disclosed board positions, as well as four previously undisclosed board or executive positions. In Part 13, the respondent disclosed one expense of \$1,437.08 from a law school, and one expense of \$4,568.46 from the Council of State Governments Justice Center. The respondent's original PFS did not disclose any expenses in Part 13.

11. Appraisal district records for 2006 indicated that the market value of six properties that the respondent failed to disclose in her original PFS covering calendar year 2006 was approximately \$2,440,260. In addition to this amount, appraisal district records indicated that the improvement to one property at issue in that PFS was built in 2008. A 2008 appraisal of that property valued the land at \$750,648, but did not show the land value before 2008. Appraisal district records did not indicate the value for an additional property that the respondent failed to disclose in her original PFS covering calendar year 2006.
12. Appraisal district records for 2007 indicated that the market value of six properties that the respondent failed to disclose in her original PFS covering calendar year 2007 was approximately \$2,867,550. In addition to this amount, appraisal district records indicated that the improvement to one property at issue in that PFS was built in 2008. A 2008 appraisal of that property valued the land at \$750,648, but did not show the land value before 2008. Appraisal district records did not indicate the value for an additional property that the respondent failed to disclose in her original PFS covering calendar year 2007.
13. In summary, the respondent's corrected PFS covering calendar year 2006 included the following items that were not disclosed in the original PFS:
 - Between 100 and 499 shares of stock in a business in Part 2,
 - One "note," one money market account, and 20 certificates of deposit in Part 3,
 - Eight sources of income from interest, dividends, royalties, and rents (totaling at least \$61,500) in Part 5,
 - Eight interests in real property (district appraisal records indicated the properties were valued at more than \$2,440,260 in 2006) in Part 7A,
 - One beneficial interest in a business entity in Part 7B,
 - Five board or executive positions in Part 12, and
 - Two expenses accepted under the honorarium exception (totaling approximately \$3,760) in Part 13.
14. In summary, the respondent's corrected PFS covering calendar year 2007 included the following items that were not disclosed in the original PFS:

- Between 100 and 499 shares of stock in a business in Part 2,
- Two “notes,” one money market account, and 22 certificates of deposit in Part 3,
- Nine sources of income from interest, dividends, royalties, and rents (totaling at least \$121,500) in Part 5,
- Eight interests in real property (district appraisal records indicated the properties were valued at more than \$2,867,550 in 2007) in Part 7A,
- One beneficial interest in a business entity in Part 7B,
- Four board or executive positions in Part 12, and
- Two expenses accepted under the honorarium exception (totaling approximately \$6,010) in Part 13.

15. In response to the allegations, the respondent swore:

I inadvertently omitted some items from my Personal Financial Statements. I am in the process of determining exactly what needs to be listed on my Personal Financial Statements. When this process is complete I will file corrected Statements with the Commission.

II. Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. A state officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252, Government Code. *Id.* § 572.021. A financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. *Id.* § 572.023(a).
3. The account of financial activity includes identification by name and the category of the number of shares of stock of any business entity held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale. *Id.* § 572.023(b)(2).
4. The respondent failed to report between 100 and 499 shares of stock in a business in her PFS due in 2007, as well as in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(2) of the Government Code.

5. The account of financial activity also includes a list of all bonds, notes, and other commercial paper held or acquired, and if sold, the category of the amount of net gain or loss realized from the sale. *Id.* § 572.023(b)(3).
6. The respondent failed to disclose one note, one money market account, and 20 certificates of deposit in her PFS due in 2007. The respondent failed to disclose two notes, one money market account, and 22 certificates of deposit in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(3) of the Government Code.
7. The account of financial activity also includes identification of each source and the category of the amount of income in excess of \$500 derived from each source from interest, dividends, royalties, and rents. *Id.* § 572.023(b)(4).
8. The respondent failed to disclose eight sources of income in excess of \$500 derived from interest, dividends, royalties, and rents (totaling at least \$61,500) in her PFS due in 2007. The respondent failed to disclose nine sources of income in excess of \$500 derived from interest, dividends, royalties, and rents (totaling at least \$121,500) in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(4) of the Government Code.
9. The account of financial activity also includes identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale. *Id.* § 572.023(b)(6).
10. The respondent failed to disclose eight beneficial interests in real property in her PFS due in 2007, as well as in her PFS due in 2008. Appraisal district records indicated the properties were worth more than \$2,440,260 in 2006 and more than \$2,867,550 in 2007 (the calendar years covered by the PFSs at issue). The respondent also failed to disclose one beneficial interest in a business entity in her PFS due in 2007, as well as in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(6) of the Government Code.
11. The account of financial activity also includes a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or

proprietorships, stating the name of each corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held. *Id.* § 572.023(b)(10).

12. The respondent failed to disclose five board of director or executive positions in her PFS due in 2007, and failed to disclose four board of director or executive positions in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the positions were not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(10) of the Government Code.
13. The account of financial activity also includes identification of any person providing transportation, meals, or lodging expenses permitted under section 36.07(b), Penal Code, and the amount of those expenses, other than expenditures required to be reported under chapter 305, Government Code. *Id.* § 572.023(b)(11).
14. The respondent failed to disclose two expenses reportedly accepted under the honorarium exception (totaling approximately \$3,760) in her PFS due in 2007, and failed to disclose two expenses reportedly accepted under the honorarium exception (totaling approximately \$6,010) in her PFS due in 2008. Although the respondent filed corrected PFSs to disclose this information after receiving notice of the sworn complaint allegations, the financial activity was not disclosed when the statements were due. Therefore, there is credible evidence of violations of section 572.023(b)(11) of the Government Code.

III. Confidentiality

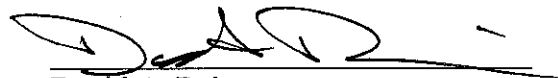
This final order describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this final order is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

IV. Sanction

The commission imposes a \$100,000 civil penalty against the respondent. The commission orders that the respondent pay the penalty no later than August 10, 2010.

Date: April 28, 2010

FOR THE COMMISSION



David A. Reisman
Executive Director
Texas Ethics Commission