

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
ADOLPH CANALES,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-280295

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-280295. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.035 of the Election Code and section 20.63 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

### II. Allegations

The complaint alleges that the respondent converted political contributions to personal use.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a senior judge and was the district judge of the 298th judicial district (Dallas County) in Texas until his term ended on January 1, 2007.
2. The allegations are based on expenditures made from political contributions that the respondent disclosed in campaign finance reports. The allegations are that the respondent converted political contributions to personal use in connection with the following expenditures in approximate amounts:
  - \$11,200 for computer equipment, computer supplies, and software in 2003
  - \$5,470 for computer equipment, computer supplies, software, Christmas bonuses to court staff, and a magazine subscription in 2004

- \$3,940 for computer equipment, computer supplies, software, Christmas bonuses to court staff, car rentals, magazine subscriptions, books, and maps in 2005
  - \$21,120 for computer equipment, software, printer supplies, Christmas bonuses to court staff, car rentals, magazine subscriptions, lodging, and reimbursements to staff and the respondent in 2006
  - \$500 for computer software and a Christmas payment to staff in 2007
3. The respondent stated in his semiannual campaign finance report filed on January 12, 2006, that he was not seeking re-election as a district judge. He filed a designation of a final report on January 31, 2006.
  4. There is no evidence that the respondent received a reimbursement with public money for any of the expenditures at issue.

#### Payment to Minister

5. The respondent disclosed a political expenditure of \$1,500 on December 28, 2006, to an individual for, "Baptist street minister (Oak Cliff streets) for many years of prayer and support and good deeds." The payee's address was disclosed as "Address Unknown (transient) (comes around courthouse)" in Dallas. There is no evidence that the payee was affiliated with a charitable organization at the time the expenditure at issue was made.
6. In response to the allegation, the respondent swears:

While the minister may not have qualified as a 501(c)(3) organization, he had had a positive impact on the community by attempting to get young men out of gangs and off of the streets. This was indeed a charitable contribution in every sense of the term. The Ethics Commission recognizes that substantial compliance with section 253.035 is sufficient. *See* [Ethics Advisory Opinion] No. 258 (1995) (noting that although candidate had technically violated section 253.035(h), his actions sufficiently conformed to this provision by substantially complying with its terms).

#### Payments to Staff

7. The respondent disclosed approximately \$4,700 in political expenditures to court staff for bonuses and Christmas gifts. Regarding the expenditures, the respondent swears that the expenditures were "to supplement the salary of government employees who worked for Respondent while he held the elected office of district judge."

Computers for Court Staff

8. The respondent disclosed two political expenditures totaling approximately \$3,080 for computers for court staff.
9. The respondent's July 2006 and January 2007 semiannual reports did not disclose any assets valued at \$500 or more that were purchased with political contributions and were on hand as of the last day of the reporting period.
10. Regarding the expenditures for computers, the respondent swears that he purchased computer equipment for court personnel to use in the performance of their official duties for him while he was a district judge. He also swears:

The two laptop computers were given to the Court Administrator and the Court Bailiff. They are still using them, as far as I can tell. I believe the bailiff is still using his in the courtroom. These employment bonuses were reported on the appropriate reports.

Conference Expenses for Court Administrator

11. The respondent disclosed a political expenditure of \$549 to the "Nat'l Center for State Courts" in Williamsburg, Virginia, on October 18, 2006, for his court administrator to attend a conference. The respondent also disclosed a political expenditure of \$945.20 to the court administrator on December 19, 2006, for "Reimbursement NCSC Conference airfare hotel and misc. expenses."
12. Regarding the expenditures for the conference, the respondent swears:

Respondent paid for these expenses while he held the elected office of district judge. The court administrator's duties were of great assistance to the Respondent with his official duties and activities. A judge may use political contributions to pay the expenses for an individual to attend an educational conference so that the individual may assist the judge in the performance of his official duties.

40-Hour Seminar, Lodging, Meals, and Related Expenses

13. The respondent disclosed a political expenditure of \$5,831.92 to the Four Seasons Hotel in Austin, Texas, for "seven nights suite for week long legal seminar – 40 hours CLE" (continuing legal education). The respondent also disclosed a political expenditure of \$983.50 to the Center for Public Policy Dispute Resolution (CPPDR) in Austin, Texas, on October 4, 2006, for "seminar 40 hours CLE." The respondent also disclosed a political

expenditure of \$597.58 to AVIS Rent-a-Car in Austin, Texas, on December 9, 2006, for “rental car for week long seminar.”

14. The CPPDR is a non-profit organization located at the University of Texas School of Law. It offered a 40-Hour Basic Mediation Training course in December 2006.
15. The registration fee for the December 2006 course included \$945 for attendance (government/non-profit rate) and \$38.50 for an optional mediation textbook. The course provides 40 hours of CLE credit that may be used to satisfy CLE requirements with the State Bar of Texas.
16. Regarding the expenditures related to the CPPDR conference, the respondent swears:

All the expenditures for lodging and travel which I reported were directly related to obtaining additional continuing education and the corresponding CLE credit hours. I have always sought more CLE credit than the minimum required. The more CLE a judge obtains, I believe, the better off he/she will be. The minimum requirements are just that, in my opinion. Judges and lawyers are strongly urged to obtain as much CLE as possible. The College of the State Bar is there for the purpose of encouraging lawyers and judges to continue to educate themselves in all aspects of the law. In addition, alternate dispute resolution is an integral part of the civil litigation practice, in which all lawyers and judges should be well versed and familiar with [sic].
17. The respondent provided a copy of an invoice from the Four Seasons Hotel that details \$5,840.04 in charges relating to a stay from December 3 to December 9, 2006. The hotel is a luxury hotel in Austin next to Lady Bird Lake and features a restaurant and “Lobby Lounge” available to guests. The charges correspond to the \$5,831.92 expenditure the respondent disclosed to the hotel in his report. The charges include \$4,200 for a guest room at \$700 per night, lodging, taxes, valet parking, meals and beverages, beverages from a private bar, and a charge for a local telephone call.
18. The respondent provided additional information regarding some of the charges on the invoice. Regarding a charge of \$325.66 to a restaurant and \$46.25 to a “Lobby Lounge” for “pre-dinner” on December 5, 2006, the respondent swears, “There were four of us, another district judge, whom I would rather not mention by name, and a friend’s son and his wife, and myself. We had dinner.” The respondent estimated his portion of the meal at 1/4 of the total cost or \$92.98. He states that the remaining amount of \$278.93 is “arguably not related, though I still believe they were related to officeholder activities.”
19. Regarding the charges for lodging, the respondent also swears:

My wife arrived at the hotel sometime between 11 AM and 3 PM on Thursday, December 7, 2006. I was in class at the seminar and do not know the time. She does not remember and has no record of such. She was in the room when I arrived after class. There was no extra room charge for her stay.

20. The respondent swears regarding the following additional charges that were included on the invoice:
- \$62.24 for room service on December 7, 2006. The respondent states, “assume this was my wife’s lunch.”
  - \$36.27 for room service on December 8, 2006. The respondent states, “my wife’s breakfast?”
  - \$45.89 for “The Café” on December 8, 2006. The respondent states, “my wife’s lunch?”
  - \$54.23 for room service on December 9, 2006. The respondent states, “my wife’s and my breakfast—departure date,” and that his half of the charge is \$27.12, but that the amount “cannot be exact” and that the remaining \$27.11 is “arguably not related.”
21. Of the charges for room service and lunch, the respondent states that \$171.51 is “attributable to my wife.”
22. The list also includes an expenditure of \$57.12 to “Moonshine Patio” on December 8, 2006. The respondent states in his response to the complaint, “My wife and I had dinner night before departure.” He claims that his half of the meal is \$28.56, that the amount “cannot be exact,” and that the remaining balance of \$28.56 is “arguably not related.”
23. The list also includes an expenditure of \$457.75 on December 7, 2006, to the Driskill Hotel. The respondent states, “My wife and I and a friend’s daughter and her friend. We had dinner.” He claims that his portion of the meal is 1/4 of the total or \$114.44 and that the remaining balance of \$343.31 is “arguably not related, though I feel otherwise.” The respondent disclosed this particular expenditure in his campaign finance report and disclosed the purpose as “appreciation dinner with supporters.”
24. The respondent disclosed in his personal financial statement (PFS) covering 2007 that his source of occupational income was his self-employment as “consulting, mediation, arbitration.” In the PFS covering 2006, the respondent disclosed two sources of occupational income: district judge and “now self-employed as mediator/arbitrator & judge, sitting by assignment.” In the PFS covering 2005, the respondent disclosed his source of occupational income as the State of Texas and that he was employed as a civil district judge.

Other Car Rental Expenses and Reimbursements

25. The respondent disclosed the approximately \$3,070 in political expenditures for car rentals, and other expenses disclosed with the purpose of attending judicial conferences, including \$440.63 to the respondent for “Reimbursement for expenses incurred for gasoline and food and gratuities for two CLE seminars;” \$225 to the respondent for “reimbursement (estimated) AVIS rent car Corpus Christi Judicial Conference;” and \$746.84 to the respondent for “reimbursement food and gasoline and misc expenses at Houston Judicial Conference September 2006.”
26. The respondent did not disclose any political expenditures made from personal funds, or that reimbursement was intended for any expenditures, in any campaign finance reports filed with the commission.
27. Regarding the reimbursements to the respondent for travel expenses, the respondent swears:
- I reported the reimbursements to myself because I had to charge these expenses to my credit card and/or paid cash for a few minor expenses. It is evident from the report that I was reporting personal fund expenditures and simultaneously seeking reimbursement for those personal expenses incurred in conjunction with attending the Judicial Conference in Houston at the Westin Galleria.
28. Regarding the expenditure for the “estimated” reimbursement of \$225, the respondent swears:

The reason I made the estimate was because I have not been able to locate the relevant records of expenditures. I had been intending to seek reimbursement for a long period of time. I rented a car at the airport in Corpus Christi to use while attending a judicial conference there, for a period of three days, a Saturday through the following Tuesday. The estimate is based on my best recollection and knowing that a full sized car at AVIS rents for approximately \$65.00/day, plus taxes and other typical charges. I believe the amount estimated is reasonable.

Magazine and Newspaper Subscriptions and Books

29. The respondent disclosed approximately \$920 in political expenditures for magazine and newspaper subscriptions and books. The expenditures include \$245 to the Wall Street Journal on August 30, 2004, for a subscription and online access and \$289 to the respondent on October 5, 2006, for “reimbursement WSJ subscription.”
30. In response to the allegations, the respondent swears:

These magazines and books were all purchased while Respondent was sitting as an elected district court judge. These items were mailed to the courthouse and provided to the jury for their use, although Respondent and other court personnel read them as well. Such an expense is related to Respondent's official duties and is not a conversion to personal use. As to the Wall Street Journal, Respondent continues to use that publication to keep himself informed about current business and legal issues helpful in his duties as a visiting judge. For a certain period of time after Respondent became a senior judge he received some of the other magazines at his home. This incidental personal use will be reimbursed.

31. The respondent also swears:

The magazines all had different beginning and ending dates on the subscriptions. All were delivered to the court and used in the jury room. Sometime during the last two or three months of 2006, it was suggested to me that the remaining subscriptions should be redirected to my home and later brought to the jury room. This was done for most of the remaining subscriptions. Some subscriptions expired during 2006, some in 2007, and some in 2008. In March and April and May of this year, I delivered four banker boxes of these magazines to the jury room, each containing around 50 to 60 magazines. I also redirected any remaining subscriptions back to the court, c/o the court administrator, for use in the jury room.

It is very difficult to ascertain the exact amount to reimburse. I have not done so yet, but intend to do so.

32. The respondent's unexpended contributions report covering 2007 disclosed \$26,530.40 in unexpended contributions. The respondent's unexpended contributions report covering 2008 disclosed that he retained \$26,540.40 in unexpended contributions and that he received \$10 in interest from his contributions. The 2008 report does not indicate that he made any reimbursements to his political contributions.

#### Computer Equipment

33. The respondent disclosed approximately \$3,900 in political expenditures for computer hardware and software. Regarding the expenditures, the respondent swears:

These purchases were made by Respondent during the course of his judgeship for legitimate officeholder purposes. These items were purchased with a good faith intention of using them in connection with the judge's duties and activities as a judge or as a candidate for office.

Such items such as the LCD monitor was intended to be used in a courtroom and lecture and seminar settings. As a visiting judge in some counties of the State, the monitor could be helpful for case presentation. The monitor is capable of displaying two documents simultaneously side-by-side. Judge Canales has contemplated running for the Court of Appeals and this equipment would be useful in campaign presentations. It is presently not being used but may be in future case assignments. The service contract purchase is self-explanatory.

The fax machine and Wireless Network Expander were intended to allow the judge to work at his home. Visiting judges have no formal offices. The wireless network expander is still in its box which has never been opened.

The Roxio Media 8 is a sound system which can be used in connection with such items as the monitor. It has never been used or even opened. The same is true for the surge suppressor, the Corel Paint Shop, the PSP 9.0 software, and the Roxio 7.5 software. None has ever been used and are still in the boxes. Some of the CD's have been used for judicial matters. The Norton Internet Security software is a standard security program to protect computer systems from viral corruption. Any computer used for court purposes must have such security software. The subscription has expired, no updates have been purchased since the Feb. 07 update and the system software is presently of no value. As with any IT products, a failure to use and update the systems software results in the systems software becoming outdated and the value decreases significantly.

The external hard drives were used to back up files from the judge's court computers. Once certain official and court related records are deleted from them, the judge intends to donate them to an appropriate entity.

Judge Canales' career as a judge is not over and he is contemplating a possible candidacy in the near future. The uses of his campaign officeholder funds are consistent with the law and the Commission's rules. All such expenditures have been properly reported. If the judge fails to return to elective office, all remaining items will be disposed of in accordance with the statutes.

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

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

1. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).

2. The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution. *Id.* § 253.035(c).
3. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d).
4. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(a). There is no criminal offense for a violation of section 253.035 of the Election Code. ELEC. CODE § 253.035. Thus, the commission may not consider allegations relating to expenditures that were made before February 22, 2005 (more than three years before the complaint’s postmark date). Therefore, only the following expenditures at issue are within the commission’s enforcement jurisdiction, in approximate amounts:
  - \$3,310 in 2005
  - \$21,120 in 2006
  - \$500 in 2007

#### Payment to Minister

5. At the end of the six-year period beginning on the date a person ceases to be an officeholder or candidate or files a final report, whichever is later, the former officeholder or candidate shall remit any unexpended political contributions to the political party with which the person was affiliated when the person’s name last appeared on a ballot; a candidate or political committee; the comptroller for deposit in the state treasury; one or more persons from whom political contributions were received, in accordance with subsection (d); a recognized charitable organization formed for educational, religious, or scientific purposes that is exempt from taxation under section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments; or a public or private postsecondary educational institution or an institution of higher education as defined by Section 61.003(8), Education Code, solely for the purpose of assisting or creating a scholarship program. *Id.* § 254.204(a).
6. In Ethics Advisory Opinion No. 47 (EAO 47), the commission stated that an expenditure of political contributions for one of the purposes set out in section 254.204 of the Election Code is not a personal use of political contributions. Ethics Advisory Opinion No. 47 (1992).
7. In Ethics Advisory Opinion No. 258 (EAO 258), the commission addressed whether a candidate may use political contributions to reimburse himself for political expenditures made from personal funds that the candidate reported as loans. Ethics Advisory Opinion No.

258 (1995). It stated that the technically correct way to report the use of personal funds is to disclose expenditures made from these funds on Schedule G of a campaign finance report and that by reporting an expenditure on Schedule G and indicating that reimbursement is intended, a filer has taken the steps necessary to allow the filer to reimburse his personal funds from political contributions. *Id.*

8. The evidence indicates that the respondent used political contributions to pay \$1,500 to a homeless ordained minister for “many years of prayer and support and good deeds.” There is insufficient evidence that the expenditure was made primarily to further personal or family purposes not connected with the performance of duties or activities as an officeholder. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code.

#### Payments to Staff

9. In Ethics Advisory Opinion No. 254 (EAO 254), the commission stated that title 15 of the Election Code permits a legislator to use political contributions to supplement the salaries of state employees under his or her supervision by paying the supplements directly to the employees. Ethics Advisory Opinion No. 254 (1995).
10. The evidence indicates that the respondent paid approximately \$4,700 to district court employees under his supervision as a judge and that the payments were made to supplement their salaries. Therefore, in accordance with EAO 254, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditures.

#### Computers for Court Staff

11. In Ethics Advisory Opinion No. 25, the commission considered whether a judge, as an officeholder, may use political contributions to purchase electronic equipment for official use in the judge’s courtroom or chambers. Ethics Advisory Opinion No. 25 (1992). The commission stated that such a use would not be a conversion to personal use and would be permissible. *Id.* The opinion also noted that the asset would be subject to the various provisions of title 15 of the Election Code applicable to an asset purchased with political contributions. *Id.*
12. The evidence indicates that the respondent paid approximately \$3,080 from political contributions to purchase laptop computers for the use of the bailiff and the court administrator in his court and that the computers were provided to them either as gifts or as compensation. In either case, it appears that the computers have not remained in the respondent’s possession and there is no evidence that the respondent received a personal or family benefit from the purchase or use of the computers. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the computers.

Conference Expenses for Court Administrator

13. In Ethics Advisory Opinion No. 378 (EAO 378), the commission addressed whether a legislator may use political contributions to pay travel expenses and conference registration fees incurred by the legislator's spouse in attending the opening ceremony of the legislative session, Legislative Ladies functions, or legislative conferences. Ethics Advisory Opinion No. 378 (1997). The commission stated that the permissibility of such use depends on whether the attendance of the spouse at those events is connected to the legislator's performance of legislative duties or activities. *Id.* The commission also stated that a legislator may use political contributions to pay for his or her spouse to attend a legislative conference if the spouse attends the event to participate in the substantive programs offered at the seminar in order to assist the legislator in the performance of legislative duties or activities. *Id.*
14. In pertinent part, each court coordinator of a district court shall annually complete 16 hours of continuing education. Rules of Judicial Education § 6a.
15. The evidence indicates that the respondent paid approximately \$1,490 to a member of his office staff for attendance at a conference in connection with the respondent's duties or activities as an officeholder. There is no evidence that the respondent received a reimbursement from the district for the expenditures. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditures.

40-Hour Seminar, Lodging, Meals, and Related Expenses

16. In Ethics Advisory Opinion No. 245 (EAO 245), the commission determined that for judges required to be licensed to practice law in Texas, the payment of state bar dues is a purpose connected with the duties or activities of a judicial candidate or officeholder. Ethics Advisory Opinion No. 245 (1995). Thus, such a payment is not a conversion of political contributions to personal use. *Id.*
17. In Ethics Advisory Opinion No. 247 (EAO 247), the commission addressed whether a judge may use political contributions to pay a person to assist the judge in the preparation of a thesis required for a Masters of Law in the Judicial Process. Ethics Advisory Opinion No. 247 (1995). The commission stated that whether a particular activity is connected with the performance of duties or activities as an officeholder is a fact question, but that a course of study about the judicial process may be connected with a judge's duties or activities of office and that, if so, it would be permissible to pay expenses incurred in connection with that course of study. *Id.*
18. In Ethics Advisory Opinion No. 267 (EAO 267), the commission stated that if a legal seminar is connected to a judge's performance of his duties, then the judge may use political contributions to cover expenses for attending the seminar. Ethics Advisory Opinion No. 267 (1995).

19. In Ethics Advisory Opinion No. 279 (EAO 279), the commission was asked whether a senior judge may use surplus political contributions to pay for continuing legal education courses. Ethics Advisory Opinion No. 279 (1995). The commission stated that a senior judge continues to hold a public office and is required to fulfill continuing legal education requirements in order to be eligible for assignment. *Id.* Therefore, the commission stated, payment for continuing legal education courses is connected with a senior judge's duties as a holder of public office and may be made from political contributions. *Id.*
20. In Ethics Advisory Opinion No. 432 (EAO 432), the commission was asked whether the mayor of a city may use political contributions to pay the annual fee for a civil engineer's license. Ethics Advisory Opinion No. 432 (2001). The requestor of the opinion informed the commission that he believed he had used his expertise as a civil engineer in his duties as mayor. *Id.* The commission stated:

Given the breadth of a city's activities, it is doubtless true that an engineering background is sometimes useful to the mayor in the performance of his duties and activities of his office, just as a background in law, public health, aviation, or some other profession would be helpful to the mayor of a city. Indeed, almost any educational background is likely to be helpful to someone exercising a leadership role in city government. It is the knowledge, however, not a professional license, that is useful. The license itself allows the actual practice of engineering, which would be of value primarily for the mayor's personal purposes.

*Id.* The commission concluded that a candidate or officeholder may not use political contributions to pay a license fee unless the license is required for the office held or sought. *Id.* The commission also stated that it does not intend to suggest that a candidate or officeholder may use political contributions to pay for general education or to prepare for a possible private career. *Id.* at n.1. Rather, a candidate or officeholder may use political contributions to pay for education only if the education primarily furthers activities as a candidate or officeholder. *Id.*

21. In Ethics Advisory Opinion No. 111 (EAO 111), the commission was asked whether an officeholder may use political contributions to pay transportation and lodging expenses for the officeholder's spouse. Ethics Advisory Opinion No. 111 (1992). The commission stated:

Whether it is appropriate for a candidate or officeholder to spend political funds for a spouse's travel depends on the purpose of the spouse's travel. It is appropriate for a candidate to spend political contributions to pay the travel expenses of his or her spouse if the spouse is campaigning for the candidate, since the spouse's travel is connected with the campaign. Similarly, it is appropriate for an officeholder to spend political contributions to pay for the spouse's travel if the travel is in connection with the performance of duties of the officeholder's office. An officeholder may not, on the other hand, spend

political contributions to pay for a spouse's travel that is not connected with the official duties of the officeholder. Such an expenditure would primarily further family purposes and therefore constitute a conversion of political contributions to personal use.

*Id.*

22. In Ethics Advisory Opinion No. 269 (EAO 269), the commission addressed whether an officeholder may use for personal purposes an airplane purchased with political contributions. Ethics Advisory Opinion No. 269 (1995). The commission determined that as long as there is no additional cost incurred, the personal use prohibition does not prevent a friend or family member from accompanying a candidate or officeholder on an airplane purchased with political contributions. *Id.*
23. In Ethics Advisory Opinion No. 378 (EAO 378), the commission determined that a legislator may not use political contributions to pay for the attendance of a spouse at a social event that offers entertainment and sightseeing, but may do so if the spouse attends the event to participate in the substantive programs offered at the event in order to assist the legislator in the performance of legislative duties or activities. Ethics Advisory Opinion No. 378 (1997).
24. In Ethics Advisory Opinion No. 241 (EAO 241), the commission determined that a legislator may use political contributions to pay for "meals for state business not reimbursed by the state." Ethics Advisory Opinion No. 241 (1995). The commission also addressed whether a legislator may use political contributions for meals in Austin that do not take place in connection with the conduct of state business. *Id.* Specifically, the issue was whether the costs of such meals are "reasonable housing or household expenses." *Id.* The commission stated that the costs of such meals would not be considered "household expenses" because a legislator would incur meal costs whether or not he was required to reside in Austin. *Id.*
25. It is a defense to prosecution or to imposition of a civil penalty that the person reasonably relied on a written advisory opinion of the commission relating to the provision of the law the person is alleged to have violated or relating to a fact situation that is substantially similar to the fact situation in which the person is involved. GOV'T CODE § 571.097.
26. Regarding the respondent's expenditures to pay for and attend the CLE course, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code because he reasonably relied upon EAO 279.
27. Regarding the expenditures for the hotel, car rental, and valet parking that occurred during the CPPDR CLE course, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditures.
28. Regarding the approximate \$1,390 in expenditures for meals, beverages, private bar costs, and a local telephone call that occurred during the CPPDR CLE course, the evidence shows

that these expenditures were made for the respondent, his spouse, and friends to pay for meals and other expenses that they would have incurred regardless of the respondent's office. The evidence does not show that the expenditures were for the respondent's candidate or officeholder purposes. Rather, the evidence shows that the expenditures were for individual or family purposes not connected with the respondent's performance of duties or activities as a candidate or holder of a public office. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.

#### Other Car Rental Expenses and Reimbursements

29. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
30. Regarding the approximate \$1,650 for car rentals to attend judicial conferences, there is no evidence that any of the rented vehicles were used for personal purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code in connection with the expenditures.
31. Regarding the approximate \$1,190 the respondent paid from personal funds for food, gasoline, gratuities, and miscellaneous expenses that were not reported as political expenditures made from personal funds, the respondent used political contributions to reimburse himself for the expenditures and provided no additional information regarding the food, gratuities, or miscellaneous expenses to indicate how those expenses related to a judicial conference. As stated in EAO 241, an officeholder may not use political contributions to pay for meal costs that are not connected with campaign or officeholder duties or activities. Presumably, the respondent would be required to eat meals regardless of whether he was at his home, traveling for work, or traveling on vacation. The evidence does not indicate that the expenses for food, gratuities, or unidentified "misc. expenses" were made in connection with campaign or officeholder duties or activities. It appears that the expenditures were made for personal purposes. In addition, the respondent did not disclose the payee information or that he made the expenditures with personal funds with the intent to be reimbursed. Therefore, there is credible evidence that the respondent violated sections 253.035(a) and 253.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules.
32. Regarding the payment of \$225 from political contributions to the respondent as a reimbursement for a car rental, there is credible evidence that the respondent did not convert

political contributions to personal use in violation of section 253.035(a) of the Election Code in connection with the expenditure.

33. A reimbursement from political contributions for political expenditures from personal funds may only be made if the expenditures from personal funds are disclosed in a campaign finance report with an indication that reimbursement is intended. The respondent paid \$225 to himself for a reimbursement for expenses paid to AVIS Rent-a-Car in connection with a judicial conference in Corpus Christi without properly disclosing the payee address or actual amount of the expenditure or including the expenditure on the correct schedule. However, the name of the payee of the expenditure was disclosed in the report and the respondent indicated that the expenditure was made from personal funds with the intent to be reimbursed. There is credible evidence that the respondent committed a technical or *de minimis* violation of section 253.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules in connection with the \$225 reimbursement.

#### Magazine and Newspaper Subscriptions and Books

34. In previous opinions concerning a judge using political contributions to pay state bar dues or for legal education and seminars, the commission determined that such use was permissible because, respectively, a judge is required to maintain a license to practice law (EAO 245) and because a senior judge is required to fulfill continuing legal education requirements (EAO 279). The commission also stated in EAO 432 that political contributions cannot be used to pay for general education. In the respondent's case, the reading of the Wall Street Journal is not necessary to maintaining a law license or fulfilling legal education requirements. In addition, there is no evidence provided by the respondent that the access to the Wall Street Journal primarily furthers the respondent's duties or activities as an officeholder. Rather, it appears that the subscription primarily furthers personal purposes and is not connected with a senior judge's duties or activities as an officeholder. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code in connection with the use of the paper publication of the Wall Street Journal at the respondent's residence and the online access to the Wall Street Journal. It is reasonable to estimate the value of the converted subscription and online access to the newspaper at approximately \$287. There is insufficient evidence that the respondent violated section 253.035(a) of the Election Code with respect to the remaining approximate \$247 in expenditures for the subscriptions that were not delivered to his home.
35. The respondent also improperly disclosed an expenditure made for the Wall Street Journal because he disclosed a reimbursement of \$289 to himself for a subscription and did not disclose any political expenditures made from personal funds for the Wall Street Journal. However, the name of the payee of the expenditure was disclosed in the report and the respondent indicated that the expenditure was made from personal funds with the intent to be reimbursed. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 253.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules in connection with an expenditure for the Wall Street Journal subscription.

36. Regarding the expenditures for books, there is insufficient evidence of a violation of section 253.035(a) of the Election Code in connection with the expenditures.
37. Regarding the other expenditures for magazine subscriptions, the evidence indicates that the respondent initially purchased the subscriptions for jurors and court staff but subsequently had the publications delivered to his home address, where some remained for more than a year. The respondent has also indicated that he intended to reimburse his political contributions for his use of the subscriptions, but has not done so. Therefore, there is credible evidence that the respondent violated section 253.035(a) of the Election Code in connection with the subscriptions. It is reasonable to estimate the value of the converted magazines at approximately \$219. There is insufficient evidence that the respondent committed a violation with respect to the remaining approximate \$66 in expenditures for the subscriptions that were not delivered to his home.

#### Computer Equipment

38. Regarding the approximate \$3,900 in expenditures for computer hardware and software, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.

### **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 a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent also acknowledges that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes an \$800 civil penalty, contingent upon the respondent reimbursing the amount at issue (\$3,080) to his political funds by March 12, 2009. Any reimbursements to political funds made pursuant to this order and agreed resolution shall be made from the respondent's personal funds and shall be reported on Schedule G (used for reporting political expenditures from personal funds) of the respondent's campaign finance reports and indicate that no reimbursement is intended. If the respondent does not reimburse the amount at issue by March 12, 2009, then the commission imposes a \$3,900 civil penalty to be paid from the respondent's personal funds, which shall be reported on Schedule G of the respondent's campaign finance reports and indicate that no reimbursement is intended. The respondent shall furnish to the commission evidence of the required payments.

### 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-280295.

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

\_\_\_\_\_  
Adolph Canales, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director