

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
LINDA HARPER-BROWN,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31007211

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on December 14, 2011, to consider sworn complaint SC-31007211. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 572.023 of the Government Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

### II. Allegations

The complaint alleged that the respondent did not disclose her spouse's financial activity and gifts worth more than \$250 in personal financial statements.

### III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative for District 105 and was a candidate for re-election in the November 2, 2010, general election.
2. The complaint alleged that the respondent did not disclose in her personal financial statements filed in 2009 and 2010 her spouse's financial activity and the gifts of three vehicles from a highway contractor.
3. The autos in question were owned by and registered to a private business entity but bore state official license plates which, were issued to the respondent.
4. The respondent's personal financial statements covering calendar years 2008 and 2009 (filed in 2009 and 2010 respectively) disclosed two sources of occupational income for the respondent and none for her spouse.

5. In response to the allegations, the respondent submitted an affidavit in which she swore:

The automobiles were not gifts to me from a contractor. My husband informs me that the use of the autos was compensation to him for work he performed in his CPA practice. My spouse, who loves me and is concerned with my well being, permits me to use one of the autos that he controls.

My spouse is a CPA. I have no control over my spouse's financial activity, including his financial activity with respect to his business activities.
6. Records of the Texas Secretary of State disclose that the respondent's spouse is the president and director of Wm E. Brown & Co. P.C.
7. On September 2, 2011, commission staff requested the respondent to provide additional information and records.
8. In response to the request, the respondent submitted an affidavit on November 30, 2011, in which she reiterated that the use of the autos was compensation to her husband for work he performed in his CPA practice for a client. She swore that the client owned the vehicles but that her husband was in daily control of them from early 2004 through late 2009, and he subsequently purchased the vehicles from the client, paying an agreed upon fair market price. She stated that her husband created a separate property agreement that she signed at the time of their marriage in 1997.
9. At the hearing, the respondent generally reiterated her earlier statements. Evidence disclosed indicated that the respondent personally selected at least one of the vehicles at issue, and used the vehicles on a regular basis.

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

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

1. A financial statement must include an account of the financial activity of the individual required by this subchapter 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. GOV'T CODE § 572.023(a).
2. The account of financial activity must include a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation. *Id.* § 572.023(b)(1).

3. A filer is required to report information about community property because the filer has ownership interest in the property. The actual control issue arises in the context in which the filer has no ownership interest.
4. Even if the vehicles at issue were the separate property of the respondent's spouse in the form of compensation, the facts indicate that the respondent exercised control over that property. The respondent was therefore required to disclose on her personal financial statements covering calendar years 2008 and 2009 the financial activity of her spouse. The respondent did not disclose the source of her spouse's occupational income during the periods at issue. Therefore, there is credible evidence that the respondent violated section 572.023(b)(1) of the Government Code by not disclosing her spouse's financial activity, to-wit in-kind compensation of automobiles over which she had actual control.

### **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 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. 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 a \$2,000 civil penalty.

**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-31007211.

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

\_\_\_\_\_  
Linda Harper-Brown, Respondent

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

Texas Ethics Commission

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