

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARIO RAMIREZ, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120366

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2014, to consider sworn complaint SC-3120366. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.031, and 254.0611 of the Election Code, section 571.1242 of the Government Code, and sections 20.62 and 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose on a campaign finance report the total amount of political contributions maintained; 2) did not properly disclose on multiple campaign finance reports political expenditures; 3) did not include on a campaign finance report for an individual from whom he accepted political contributions that in the aggregate exceeded \$50 during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; 4) accepted a political contribution from a corporation; 5) used political contributions to knowingly make political contributions that in the aggregate exceeded \$100 in a calendar year to a candidate or officeholder; and 6) in a calendar year in which the office he held was not on the ballot, used political contributions to knowingly make political contributions that exceeded \$250 to a political committee.

III. Facts Supported by Credible Evidence

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

1. The respondent is the judge of the 332nd Judicial District.
2. The respondent had a campaign treasurer in effect during the time at issue.

3. The reports at issue in the complaint are the respondent's July 2010, January and July 2011, and January 2012 semiannual reports.

POLITICAL CONTRIBUTIONS

Contributions Maintained

4. The complaint alleged that the respondent reported an incorrect balance for total political contributions maintained on the January 2012 semiannual report or, in the alternative, if the balance for contributions maintained was correct, that the respondent did not report additional contributions or expenditures. The report at issue disclosed the total amount of political contributions maintained as \$169,207.05. The respondent submitted a copy of the bank statement for the political funds account that shows that the balance on the last day of the reporting period was \$169,207.05.

Job Title and Employer/Law Firm of Contributors

5. The complaint alleged that the respondent did not disclose the job title and full name of the employer/law firm of a contributor of \$2,000 disclosed on Schedule A (used for political contributions) of the January 2012 semiannual report. The respondent disclosed that the contributor at issue was self employed. The contributor at issue was an officer or principal of a limited liability company. The contributor's name was not in the entity's name.

Corporate Contribution

6. The complaint alleged that, based on disclosures in the respondent's January 2012 semiannual report, the respondent accepted a political contribution from a corporation. The report at issue disclosed one political contribution of \$1,000 from a partnership that has an incorporated general partner. The respondent's sworn response indicated that he was unaware that the contribution was from a prohibited source. The respondent returned the contribution.

POLITICAL EXPENDITURES

Names of Payees

7. The complaint alleged that the respondent did not fully disclose the names of five payees of political expenditures that were disclosed in each of the reports at issue. As to two payees, there is no evidence that the name disclosed by the respondent is not the full name of the payee. As to the remaining three payees, the respondent disclosed commonly recognized acronyms for the payees.

Actual Payees, Reimbursement of Political Expenditures, and Reporting Total Political Expenditures of \$50/\$100 or Less

8. The complaint alleged that the respondent did not disclose the actual vendor/company payee, address, date, and/or amount pertaining to the stated purpose of political expenditures disclosed on each of the reports at issue.
9. The respondent reimbursed himself approximately \$630 for the use of his personal vehicle for political purposes (mileage).
10. The respondent reimbursed himself approximately \$13,780 for expenditures that were required to be itemized. The evidence indicates that the respondent did not disclose the actual vendor payee and/or the address, date, and amount for each of these expenditures.
11. The respondent reimbursed himself approximately \$60 for expenditures made from personal funds that amounted to \$50 or less and were made before September 28, 2011. The respondent reimbursed himself \$100 for expenditures made from personal funds that amounted to \$100 or less and were made on or after September 28, 2011. The respondent did not itemize any of the expenditures made from personal funds.
12. The respondent made approximately \$820 in reimbursements to staff, all of which were required to be itemized. The respondent did not disclose the actual vendor payee information and the amount of each of these expenditures.

Contribution to a Political Committee that Exceeded \$250 When Not on Ballot

13. The complaint alleged that the respondent used political contributions to knowingly make a political contribution to a political committee in excess of \$250 during 2010, a calendar year in which the respondent's office held was not on the ballot. The respondent's July 2010 semiannual report disclosed a \$500 expenditure on May 27, 2010, to the Democratic Governor's Association for a "Donation."
14. The Democratic Governor's Association files reports with the IRS as a 527 organization and disclosed a \$500 contribution from the respondent in a Form 8872 with a date of June 10, 2010.

Political Contribution to a Candidate Exceeding \$100

15. The complaint alleged that the respondent used political contributions to knowingly make a political contribution that in the aggregate exceeded \$100 in a calendar year to a candidate or officeholder. The respondent's July 2011 semiannual report disclosed a \$500 expenditure on

March 22, 2011, to the Laura Hinojosa Campaign for a “Golf tournament hole sponsorship” as an “Advertising expense.”

Response to Notice of a Sworn Complaint

16. The commission sent a notice of the sworn complaint to the respondent, which the respondent received. The notice informed the respondent that the alleged violations in the sworn complaint were Category Two violations, and that a response was required not later than 25 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. The respondent’s response to the complaint was filed 48 days after the response deadline.

IV. Findings and Conclusions of Law

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

POLITICAL CONTRIBUTIONS

Contributions Maintained

1. A campaign finance report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions, and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
3. The evidence indicates that the respondent properly reported the total political contributions maintained balance on the report at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Job Title and Employer/Law Firm of Contributors

4. The respondent had an active campaign treasurer appointment on file during the period at issue. Thus, the respondent was a candidate for title 15 filing purposes.
5. A campaign finance report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal

occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any. ELEC. CODE § 254.0611(a)(2)(A).

6. Black's law Dictionary defines "employer" as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." Black's Law Dictionary 565 (8th ed. 2004).
7. The commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed.
8. The respondent disclosed that the contributor at issue was self employed. The contributor at issue was an officer or principal of a limited liability company. The contributor's name was not in the entity's name and, therefore, the respondent was required to disclose the contributor's job title and that he was employed by the limited liability company. Therefore, there is credible evidence of a violation of section 254.0611(a)(2)(A) of the Election Code.

Corporate Contribution

9. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor organization, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation or labor organization.
10. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
11. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
12. A partnership including one or more corporate partners is subject to the same restrictions on political activity that apply to corporations. Ethics Advisory Opinion No. 215, June 10, 1994.
13. The evidence shows that the respondent accepted a political contribution from a partnership that had a general partner that was incorporated. Credible evidence indicates that at the time the respondent accepted the contribution, he did not know the particular contribution at issue

was from a partnership with a corporate general partner and that a contribution from such an entity is prohibited. The respondent returned the contribution. There is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.

POLITICAL EXPENDITURES

Names of Payees

14. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 (at the time at issue) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. As to two payees, there is no evidence that the name disclosed by the respondent is not the full name of the payee. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the names of these payees.
16. As to the remaining three payees, the respondent disclosed commonly recognized acronyms for the payees. The respondent properly disclosed the names of these payees. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to the names of these payees.

Actual Payees, Reimbursement of Political Expenditures, and Reporting Total Political Expenditures of \$50/\$100 or Less

17. A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 before September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
18. A candidate who makes political expenditures from the candidate's 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 required to be filed that covers the period in 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. *Id.* § 253.035(h).
19. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows IF the reimbursement occurs during

the same reporting period that the initial expenditure was made: (1) the amount of political expenditures that in the aggregate exceed \$100 (\$50 before September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and (2) included with the total amount or a specific listing of the political expenditures of \$100 (\$50 before September 28, 2011) or less made during the reporting period. Ethics Commission Rules § 20.62(a).

20. Ethics Commission Rules § 20.63 was effective on January 8, 2012. All of the expenditures at issue were made before that date. The following version of that rule was in effect before that date. A candidate is required to report a campaign expenditure from personal funds. *Id.* § 20.63(a). An officeholder is not required to report an officeholder expenditure from personal funds unless he or she intends to be reimbursed from political contributions. *Id.* § 20.63(b). A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures were fully reported on the report covering the period during which the expenditures were made; and (2) the report disclosing the expenditures indicates that the expenditures are subject to reimbursement. *Id.* § 20.63(d). A candidate's or officeholder's failure to comply with subsection (d) of this section may not be cured by filing a corrected report after the report deadline has passed. *Id.* § 20.63(e). A candidate or officeholder who has complied with subsection (d) of this section and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. *Id.* § 20.63(f).

Reimbursements to the Respondent

21. The respondent reimbursed himself approximately \$630 for the use of his personal vehicle for political purposes (mileage). The use of his personal vehicle for political purposes was not required to be disclosed (itemized) separately from the reimbursement for that use. Section 253.035(h) of the Election Code does not apply to reimbursements a candidate makes to himself for mileage. Therefore, there is credible evidence of no violation of sections 254.031(a)(3) or 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules as to these reimbursements.
22. The respondent reimbursed himself for approximately \$13,780 in expenditures from personal funds that were required to be itemized. The evidence indicates that the respondent did not disclose the actual vendor payee and/or the address, date, and amount for each of these expenditures. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules as to these expenditures. In addition, the respondent made approximately \$160 in expenditures that were required to be itemized because the respondent reimbursed himself for the

expenditures. Therefore, there is credible evidence of violations of section 253.035(h) of the Election Code regarding \$160 in expenditures.

Reimbursements to Staff

23. The respondent made approximately \$820 in reimbursements to staff, all of which were required to be itemized. The respondent did not disclose the actual vendor payee information and the amount of each of these expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules as to these expenditures.

Contribution to a Political Committee that Exceeded \$250 When Not on Ballot

24. A judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250. ELEC. CODE § 253.1611(d).
25. This section does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that is (1) made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution, or (2) in an amount that is not more than the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs. *Id.* § 253.1611(e)(1), (2).
26. For purposes of Subsection (e)(2), a candidate's or officeholder's pro rata share of a political committee's normal overhead and administrative or operating costs is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. *Id.* § 253.1611(f).
27. "Political committee" means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
28. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
29. "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).

30. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
31. “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).
32. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
33. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
34. “Officeholder expenditure” means an expenditure made by any person to defray expenses that (1) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office, and (2) are not reimbursable with public money.
35. District judges in the state of Texas serve four-year terms. TEX. CONST. ART. V, § 7. Since the respondent was reelected as district judge in November of 2008, he was not up for reelection until 2012. Therefore, the respondent’s office of district judge was not on the ballot in 2010, the calendar year when the political contribution at issue was made. Thus, the respondent could not use political contributions to make political contributions to a political committee that exceeded \$250 in 2010, unless the exception under section 253.1611(e) of the Election Code was satisfied.
36. The respondent made a \$500 political expenditure as a donation to the Democratic Governor’s Association. There is insufficient evidence that the respondent intended the \$500 as a political contribution to the organization. Therefore, there is insufficient evidence of a violation of section 253.1611(d) of the Election Code.

Political Contribution to a Candidate Exceeding \$100

37. A judicial candidate or officeholder or a specific-purpose committee for supporting or opposing a judicial candidate or assisting a judicial officeholder may not use a political contribution to knowingly make political contributions that in the aggregate exceed \$100 in a calendar year to a candidate or officeholder. ELEC. CODE § 253.1611(a).

38. The respondent made a \$500 political expenditure to the Laura Hinojosa Campaign for “Golf tournament hole sponsorship.” There is insufficient evidence that the respondent intended his payment as a political contribution. Therefore, there is insufficient evidence of a violation of section 253.1611(a) of the Election Code.

Response to Notice of a Sworn Complaint

39. If the alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(b)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
40. The respondent's response to the complaint was filed 48 days after the response deadline. There is credible evidence of a violation of section 571.1242(c) of the Government Code.

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: 1) a campaign finance report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; 2) a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 before September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; 3) a candidate who makes political expenditures from the candidate's 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 in accordance with section 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules; 4) political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported in accordance with

section 20.62 of the Ethics Commission Rules; and 5) if the alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. The respondent agrees to comply with these requirements of the law and the rules.

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 nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$2,500 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-3120366.

AGREED to by the respondent on this _____ day of _____, 20__.

Mario Ramirez, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Executive Director