

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ELIZABETH E. COKER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270329, SC-270332, AND SC-270338

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 3, 2008, to consider sworn complaints SC-270329, SC-270332, and SC-270338. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 253.155 of the Election Code, a law administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaints allege that the respondent accepted political contributions that exceeded the contribution limits under the Judicial Campaign Fairness Act, accepted political contributions the respondent knew to be made unlawfully, and failed to properly disclose political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful incumbent candidate for judge of the 258th Judicial District Court in the November 2006 general election. The respondent was unopposed in the 2006 primary election.
2. According to the 2005 population certification by the Secretary of State, the population of the 258th Judicial District was 77,158.
3. The respondent's July 2006 semiannual report disclosed a \$1,000 contribution from Mrs. Toni Cochran-Hughes and a separate \$1,000 contribution from Mr. Scott Hughes. The contributors were spouses at the time the contributions were accepted.

4. The respondent corrected the July 2006 semiannual report and reduced each contribution from Mrs. Cochran-Hughes and Mr. Hughes to \$500 and changed their descriptions to “Contract labor and supplies.” The correction affidavit stated that “after realizing that an individual’s donation of his or own [sic] uncompensated (volunteer) services is not reportable,” the respondent “deleted the volunteer labor entries” that were reported as in-kind contributions from these two contributions. In response to the complaint, the respondent swears that she “previously reported ‘contributions’ of volunteer personal services” by Mrs. Cochran-Hughes and Mr. Hughes and that, because “an individual’s uncompensated personal services” are not required to be reported as a contribution, she “deleted the ‘contributions’ from the corrected report.”
5. No portion of the contributions from Mrs. Cochran-Hughes or Mr. Hughes was returned to the contributors.
6. The respondent’s July 2006 semiannual report disclosed a \$1,000 political contribution from Mr. John E. Williams, Jr. and a separate \$1,000 political contribution from Mrs. Sheridan Williams. The contributors were spouses at the time the contributions were accepted.
7. The respondent corrected the July 2006 semiannual report and stated in the correction affidavit:

On September 5 2006 [sic] I became aware that under Section 253.158 contributions of spouses count against a single contribution limit – as if the spouses were one individual. I had been relying solely on Section 253.155 concerning individual limits. Accordingly I have refunded the apparently excessive contribution from Mrs. Sheridan Williams and will report that refund on my next report.
8. The respondent’s 30-day pre-election report disclosed a \$1,000 political expenditure on September 5, 2006, to Mrs. Sheridan Williams for the purpose of “reimbursement of amount.”
9. The respondent’s July 2006 semiannual report disclosed a monetary contribution of \$500 from Mr. Robert Willis on May 6, 2006. On January 17, 2007, in response to the complaint, the respondent filed a correction to her 8-day pre-election report to disclose an in-kind contribution of \$444.63 from Mr. Willis, described as “Food for meet & greet event,” dated October 7, 2006.
10. On April 9, 2007, the respondent corrected her July 2006 semiannual report and changed Mr. Willis’ monetary contribution from \$500 to \$1,000, stating in the correction affidavit that the “data entry error was made in [good] faith” and that she filed the correction within 14 business days of the date she learned of the inaccuracy. The affidavit also stated, “Because the corrected contribution results in an apparently excessive contribution from Robert Willis I refunded the excessive amount on March 31, 2007.”

11. The respondent's July 2007 semiannual report disclosed a political expenditure of \$444.63 to Mr. Willis on March 31, 2007, for "reimbursement of amount that exceeded limit."
12. The complaints allege that the respondent accepted political contributions from Mr. and Mrs. Williams that she knew were made unlawfully. The complaints provided no evidence to support the allegation.
13. The complaints allege that the respondent failed to properly disclose an in-kind contribution of a political advertisement on a billboard. The billboard included a color photograph of the respondent and advocated re-election of the respondent. The billboard also included a political advertising disclosure that stated that it was paid for by "Bob Willis." According to the complaints, the cost of the billboard was \$3,500 per month.
14. Campaign finance reports filed by Mr. Willis disclosed a \$1,500 expenditure for a billboard as a direct expenditure to support the respondent. The respondent's reports did not disclose an in-kind contribution of advertising from Mr. Willis or any other person.
15. In response to the complaints, the respondent swears:

I did not pay for the billboard. Bob Willis apparently did, as a direct campaign expenditure by an individual, which he reported on Specific-Purpose Committee forms, according to the copies provided by the three complainants. I did not authorize or consent to the billboard, and further I had no opportunity to accept or reject the direct campaign expenditure by Bob Willis.

IV. Findings and Conclusions of Law

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

1. A judicial candidate or officeholder may not knowingly accept political contributions from a person that in the aggregate exceed certain contribution limits in connection with an election in which the person is involved. ELEC. CODE § 253.155(a). If the population of the judicial district of the office sought or held by the candidate or officeholder is less than 250,000, the contribution limit is \$1,000. *Id.* § 253.155(b). The contribution limit applies only to a political contribution in connection with certain offices, including the office of district judge. *Id.* § 253.151(4).
2. For purposes of the contribution limit, a contribution by the spouse or child of an individual is considered to be a contribution by that individual. *Id.* § 253.158(a). "Child" means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes. *Id.* § 253.158(b).

3. For purposes of the contribution limit, the general primary election and general election for state and county officers are considered to be a single election in which a judicial candidate is involved if the candidate is unopposed in the primary election. *Id.* § 253.1621(a)(1). For a judicial candidate who is unopposed in a primary election, each applicable contribution limit is increased by 25 percent. *Id.* § 253.1621(b). The additional 25 percent in political contributions may only be used for making officeholder expenditures. *Id.*
4. A candidate is a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office, including the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
5. A political contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* §§ 251.001(2), (3), (5).
6. A political contribution consisting of an individual's personal service is not required to be reported under this chapter if the individual receives no compensation for the service. *Id.* § 254.033.
7. At the time relevant to the complaints, the respondent had an active campaign treasurer appointment on file as a candidate for district judge of the 258th Judicial District Court. A candidate for the office of district judge may not knowingly accept political contributions from a person that in the aggregate exceed certain limits in connection with each election in which the person is involved. *Id.* § 253.155(a).
8. In 2005, the population of the 258th Judicial District was 77,158. The contribution limit for a judicial candidate in a district with a population less than 250,000 is \$1,000. *Id.* § 253.155(b)(2)(A). Thus, the contribution limit that applied to the respondent under section 253.155 of the Election Code was \$1,000.
9. The respondent was unopposed in the 2006 primary election. Thus, under section 253.1621(b) of the Election Code, the respondent's contribution limit for the election was increased by 25 percent. Therefore, the respondent was prohibited from accepting political contributions in excess of \$1,250 from any person in connection with the election. If the respondent accepted political contributions in excess of \$1,000 from any person in connection with the election, the excess may only be used for making officeholder expenditures.
10. The respondent accepted \$500 in in-kind campaign contributions in the form of supplies from each of Mrs. Cochran-Hughes and Mr. Hughes. The respondent also accepted \$500 in in-kind campaign contributions in the form of personal services valued at \$500 from each individual. If the two contributors provided uncompensated personal services to the

respondent, then the respondent was not required to disclose those contributions of services. However, in Ethics Advisory Opinion No. 49, the commission stated, “the uncompensated provision of personal services in connection with a campaign *is regulated by title 15 of the Election Code* but is not required to be reported under title 15.” Ethics Advisory Opinion No. 49 (1992) (emphasis added). Thus, the personal services provided by Mrs. Cochran-Hughes and Mr. Scott Hughes were political contributions subject to the contribution limits applicable to judicial candidates.

11. For purposes of the contribution limits, a contribution from one spouse is also considered a contribution from the other spouse. The evidence shows that Mrs. Cochran-Hughes and Mr. Scott Hughes were spouses at the time the contributions were accepted. Thus, the total amount of political contributions the respondent could legally accept from them was \$1,250. Any amount that exceeded \$1,000 could only be used for officeholder purposes. The evidence indicates that the respondent accepted \$2,000 in political contributions from the couple that were used solely for campaign purposes. Therefore, there is credible evidence that the respondent violated section 253.155(a) of the Election Code by accepting political contributions from a person in excess of the contribution limits.
12. The respondent accepted a \$1,000 political contribution from each of Mr. John E. Williams and Mrs. Sheridan Williams. The contributors were spouses at the time the contributions were accepted. Thus, the total amount of political contributions the respondent could legally accept from them was \$1,250. Any amount that exceeded \$1,000 could only be used for officeholder purposes.
13. The respondent accepted \$2,000 in political contributions from Mr. and Mrs. Williams. There is no evidence that any amount of the contributions was used for officeholder purposes. Furthermore, the respondent returned \$1,000 to the contributors, which indicates that the respondent exceeded the contribution limits by \$1,000. Therefore, there is credible evidence that the respondent violated section 253.155(a) of the Election Code by accepting \$1,000 in political contributions from a person that exceeded the contribution limits.
14. The respondent accepted approximately \$1,445 in political contributions from Mr. Robert Willis. The total amount of political contributions the respondent could legally accept from Mr. Willis was \$1,250. Any amount that exceeded \$1,000 could only be used for officeholder purposes.
15. There is no evidence that any amount of the contributions from Mr. Willis was used for officeholder purposes. Furthermore, the respondent returned approximately \$445 to the contributor, which indicates that she exceeded the contribution limits by that amount. Therefore, there is credible evidence that the respondent violated section 253.155(a) of the Election Code by accepting approximately \$445 in political contributions from a person that exceeded the contribution limits.

16. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). This section does not apply to a political contribution made or accepted in violation of the Judicial Campaign Fairness Act. *Id.* § 253.003(c). Therefore, there is credible evidence that the respondent did not violate section 253.003(b) of the Election Code.
17. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
18. A political contribution means, in pertinent part, a campaign contribution. *Id.* § 251.001(5).
19. A campaign contribution means, in pertinent part, a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).
20. A 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).
21. An expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
22. A direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8). A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made. Ethics Commission Rules § 20.1(5).
23. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. ELEC. CODE § 251.001(7).
24. The complaints allege that the respondent did not properly disclose a political contribution accepted in the form of a billboard advertisement. The evidence shows that the expenditure for the billboard was a direct campaign expenditure by a third party, not a political contribution. Thus, the respondent was not required to report a political contribution in connection with the billboard. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code in connection with the billboard.

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 these sworn complaints.
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 judicial candidate or officeholder may not knowingly accept political contributions from a person that in the aggregate exceed certain contribution limits in connection with an election in which the person is involved and that, for purposes of the contribution limit, a contribution by the spouse of an individual is considered to be a contribution by that individual. 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 \$1,100 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-270329, SC-270332, and SC-270338.

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

Elizabeth E. Coker, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director