

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL MILLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31107174

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 8, 2013, to consider sworn complaint SC-31107174. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 253.1611 of the Election Code, and section 20.62 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 political contributions and political expenditures on multiple campaign finance reports; 2) made unlawful political contributions to political committees in excess of \$250 in a calendar year; and 3) did not properly disclose in a campaign finance report, assets valued at \$500 or more that were purchased with political contributions.

III. Facts Supported by Credible Evidence

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

Total Political Contributions Maintained

1. The complaint alleged that the respondent did not disclose the proper amount of total political contributions maintained on his July 2010 and 2011, and January 2011 semiannual reports.
2. The evidence did not show that the amounts originally disclosed were incorrect.

Reporting Political Expenditures as Reimbursements

3. The complaint alleged that the respondent improperly reported expenditures as reimbursements for 12 expenditures totaling approximately \$1,110. The expenditures were disclosed as non-political expenditures on the reports at issue.
4. The respondent admitted in his response to the complaint that he did not originally disclose the correct payee for the political expenditures at issue.

Disclosure of the Addresses for Political Expenditures

5. The complaint alleged that the respondent did not include complete addresses for approximately \$7,940 in expenditures disclosed on his semiannual reports for January and July 2010 and January and July 2011. Two of the expenditures totaling approximately \$2,000 were disclosed as political expenditures from personal funds. The remaining expenditures (approximately \$5,940) were disclosed as non-political expenditures on the originally filed reports.
6. The reports disclose that the respondent did not include a street address or zip code for approximately \$5,530 of the expenditures at issue.
7. The reports disclose that the respondent did not include a street address, zip code, state or city, for approximately \$2,110 of the expenditures at issue. Of that amount, \$1,800.27 was for an expenditure to "Shop for Art.com."
8. The reports disclose that the respondent did not include a street address for one \$300 expenditure at issue.
9. Of the expenditures at issue, five of the expenditures totaling approximately \$120 are expenditures of less than \$50 during the reporting period to the individual payee.

Reporting an Asset of \$500 or More

10. The complaint alleged that the respondent did not include on the respondent's January 2010 semiannual report information concerning an asset on hand valued at over \$500.
11. The respondent's January 2010 semiannual report disclosed that the respondent made a \$1,800.27 expenditure on July 24, 2009, to "Shop for Art.com," for "art for jury room." The report did not include a Schedule M (used for assets on hand valued at over \$500) with that report.

12. On August 3, 2011, the respondent filed a correct report that included a Schedule M that described the following:

Artwork I purchased from shopforart.com to decorate the jury room. This consisted of several framed prints for which I paid \$1643.34 plus shipping. I intend to leave these in the jury room when I leave the bench but I guess technically they are campaign [sic] account assets for the time being.

Excessive Contributions to Political Committee When Not on Ballot

13. The complaint alleged that the respondent used political contributions to knowingly make political contributions to a political committee in excess of \$250 during calendar years 2009, 2010 and 2011 in which the respondent's office held was not on the ballot.
14. The political contributions at issue were disclosed as expenditures on the respondent's January and July 2010 and January and July 2011 semiannual reports.
15. The respondent's January 2010, July 2010, and January 2011 semiannual reports disclosed expenditures to benefit the Harris County Democratic Party.
16. The expenditures to benefit the Harris County Democratic Party are as follows:
- October 8, 2009, \$2,500 to the Harris County Democratic Party, with a purpose described as "Johnson Richards Rayburn dinner table purchase\n (contribution to HCDP)."
 - April 26, 2010, \$7,500 to the Harris County Democratic Party, with a description of "political contribution."
 - October 6, 2010, \$2,500 to the Harris County Democratic Party, with a description of "JRR Dinner [HCDP fundraising event]."
 - October 27, 2010, \$3,000 to the Harris County Democratic Party, with a description of "political contribution for 2010 general election."
17. In a supplement to his response to the complaint, the respondent swore to the following:

Complainant states I made contributions in excess of \$250 to the Harris County Democratic Party in violation of Texas Election Code §253.1611. Complainant is apparently referring specifically to §253.1611(d) given the repeated reference to contributions "exceeding \$250." Complainant points to a \$2500 contribution made on October 8, 2009, a \$7500 contribution on April 26, 2010, and a \$2,500 contribution on October 6, 2010.

Texas Election Code §253.1611(e)(2) provides an express exception to the \$250 limitation contained in §253.1611(d), for contributions made to a county executive committee of a political party. Specifically, the Harris County Democratic Party (“HCDP”) requested that I make the three contributions in question to the county executive committee for the purpose of defraying my pro rata share of the HCDP’s normal overhead and administrative and/or operating costs. These funds were used for that purpose.

18. The respondent did not address the allegations concerning the \$3,000 to the Harris County Democratic Party on October 27, 2010.
19. The Harris County Democratic Party (HCDP) is a county executive committee on file with the commission. HCDP’s January 2010 semiannual report disclosed a \$3,000 political contribution from the respondent dated December 16, 2010. The remaining political expenditures to HCDP disclosed on the respondent’s reports at issue were not found on HCDP’s campaign finance reports for the same periods.
20. The respondent’s January 2010 semiannual report disclosed expenditures on Schedule I to benefit the “American Board of Trial Advocates.”
21. The expenditures to benefit the American Board of Trial Advocates are as follows:
 - July 23, 2009, \$335.42 to the “political contribution for 2010 general election,” described as “2009 membership dues for ABOTA.”
 - December 9, 2009, \$200 to the American Board of Trial Advocates, described as “2010 membership dues for ABOTA.”
22. According to their website the American Board of Trial Advocates is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. The evidence did not show that American Board of Trial Advocates is a political committee.
23. The respondent’s July 2011 semiannual report disclosed an expenditure on Schedule I to benefit “The Progressive Forum.”
24. The expenditure to benefit The Progressive Forum is as follows:
 - May 11, 2011, \$1,500 to The Progressive Forum, described as a “Contribution/donation for 2011-2012 speaker year.”

25. According to their website the Progressive Forum, Houston, is a civic speaker organization dedicated to enriching our democracy and culture by presenting the great minds we believe are advancing the success of the individual, our species, and life on the planet, great minds from all the fields of human endeavor, the sciences and humanities as well as politics and public affairs. The website additionally states that The Progressive Forum is a nonpartisan, nonprofit 501(c)(3) organization. The evidence did not show that The Progressive Forum is a political committee.
26. In his response to the allegations regarding the expenditures to The Progressive Forum and American Board of Trial Advocates, the respondent swore, in pertinent part, to the following:

I deny I violated section 253.1611(d) of the Election Code as alleged in the complaint by making contributions to...the Progressive Forum, and by paying my membership dues to the American Board of Trial Advocates [ABOTA]. The Progressive Forum is not a political committee. ABOTA is not a political committee and my payment to ABOTA was for membership dues...

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each campaign finance report must include as of the last day of a reporting period for which the person is required to file a report, 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. A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of section 254.031. ELEC. CODE § 254.031(a-1).
3. There is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to the semiannual reports at issue.

Reporting Political Expenditures and Reimbursements

4. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

5. Ethics Commission Rule § 20.62 states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate, 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 \$50 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 \$50 or less made during the reporting period.

6. Ethics Commission Rule § 20.62 also states, in relevant part, that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be reported as follows:
 - (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, or candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.

7. The respondent admits in his response to the complaint that he did not originally disclose the correct payee for the political expenditures at issue. Additionally, since the expenditures at issue were originally reported as non-political expenditures, the respondent did not report them on the proper schedule. 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.

Disclosure of the Addresses for Political Expenditures

8. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100¹ and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

¹ \$50 during the time at issue in the complaint.

9. A campaign finance report must include, the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
10. The complaint alleged that the respondent did not include complete addresses for approximately \$7,940 in expenditures disclosed on his semiannual reports for January and July 2010 and January and July 2011. The expenditures at issue did not disclose complete addresses.
11. Of the expenditures at issue, five of the expenditures totaling approximately \$120 are expenditures of less than \$50 during the reporting period to the individual payee. Those expenditures were not required to be itemized. Therefore, with regard to those expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
12. The remaining approximately \$7,820 in expenditures did not disclose complete addresses, and were required to be itemized. Of those expenditures required to be itemized, approximately \$5,820 were also incorrectly reported as non-political expenditures. Therefore, with regard to those expenditures, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
13. By moving expenditures from the schedule for non-political expenditures, to the schedule for political expenditures, the respondent's corrections to the reports at issue also caused the amount of total political expenditures disclosed on the originally filed reports to be changed. Those amounts were not correct as originally filed. Therefore, there is credible evidence of violations of section 254.031(a)(6) of the Election Code.

Reporting an Asset of \$500 or More

14. Each report by a candidate for judicial office must include a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period. ELEC. CODE § 254.0611(a)(3).
15. The phrase "on hand" is not defined in title 15 of the Election Code. In construing a statute, words and phrases shall be read in context and construed according to the rules of grammar and common usage. GOV'T CODE § 311.011(a). A standard dictionary defines "on hand" as "in present possession or readily available." Merriam-Webster's Collegiate Dictionary, Tenth Edition, 526 (1996).
16. The respondent admits that he did not disclose the asset at issue (framed prints) on the report at issue. The asset at issue does not appear to have been gifted to the court by the end of the reporting period, and therefore appears to be an asset of the respondent. The asset was previously disclosed as a political expenditure on the same report. Not reporting it additionally on Schedule M did not substantially effect disclosure. There is credible

evidence of a technical or *de minimis* violation of section 254.0611(a)(3) of the Election Code.

Excessive Contributions to Political Committee When Not on Ballot

17. 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).
18. Section 253.1611 of the Election Code 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 (1) is 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) is 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. ELEC. CODE § 253.1611(e).
19. District judges in the state of Texas serve four-year terms. TEX. CONST. ART. V, § 7. Since the respondent was re-elected as district judge in November of 2008, he was not up for re-election until 2012. Therefore, the respondent's office of district judge was not on the ballot in 2009 or 2010, the calendar years when the political contributions at issue were made. Thus, the respondent could not use political contributions to make political contributions to a political committee that exceeded \$250 in 2009 or 2010, unless the exception under section 253.1611(e) of the Election Code was satisfied.
20. According to the respondent's campaign finance reports, during calendar years 2009 and 2010, he made four political contributions totaling approximately \$15,500 to HCDP, an amount greater than the \$250 allowed per year by statute.
21. In his response to the complaint, the respondent swore that three of the political contributions (totaling approximately \$12,500) were for the purposes of defraying his pro rata share of HCDP's normal overhead and administrative and/or operating costs and that the funds were used for those purposes. There is insufficient evidence of a violation of section 253.1611(d) of the Election Code with regard to those three political contributions.
22. Regarding the \$3,000 political contribution to HCDP, the January 2011 semiannual report described the political expenditure as a "political contribution for 2010 general election." The purpose clearly states that the contribution to HCDP was for use in the 2010 general election. That amount exceeded the \$250 allowed by statute. Therefore, with regard to that contribution, there is credible evidence of a violation of section 253.1611(d) of the Election Code.

23. The remaining approximately \$2,040 in expenditures at issue to the American Board of Trial Advocates and The Progressive Forum were not contributions to political committees. Therefore, there is credible evidence of no violation of section 253.1611(d) of the Election Code with respect to those contributions.

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 must include, for all political expenditures that in the aggregate exceed \$100 (\$50 during the period at issue) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures; 2) the respondent also acknowledges that reimbursement to staff should be reported in compliance with section 20.62 of the Ethics Commission Rules; 3) the respondent also acknowledges that a campaign finance report must include, the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; and 4) the respondent also acknowledges that 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.

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 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 \$700 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-31107174.

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

Michael Miller, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director