

TEXAS ETHICS COMMISSION

IN THE MATTER OF

FRANK HARMON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-970420, SC-970420A, SC-970420B,

SC-970420C, and SC-970420D

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 14, 2000, to consider Sworn Complaints SC-970420, SC-970420A, SC-970420B, and SC-970420C filed against Frank Harmon, Respondent. The commission met again on March 10, 2000, to consider Sworn Complaint SC-970420D filed against the respondent. The commission met again on August 11, 2000, to reconsider Sworn Complaints SC-970420, SC-970420A, SC-970420B, SC-970420C, and SC-970420D, filed against the respondent. A quorum of the commission was present at all three meetings.

The commission voted to accept jurisdiction of the complaint, but to refuse jurisdiction of the allegation regarding the use of political contributions to make a political contribution to a business (Allegation No. 8).

Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Section 252.0031, Election Code, and Section 20.311, Ethics Commission Rules, a law and a rule administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

Five complainants filed identical complaints against the respondent in his capacity as campaign treasurer for Committee for a Well-Qualified Judiciary, a specific-purpose committee. In this order, "complainant" refers to all five complainants.

The complainant alleges that the respondent violated Title 15, Election Code, by:

1. making political contributions and expenditures on behalf of another without making the proper disclosure;
2. failing to give written notice to candidates of political contributions or political expenditures made on their behalf;
3. failing to identify the candidates supported by certain expenditures;

4. failing to file a new campaign treasurer appointment as a general-purpose committee;
5. failing to file an amended campaign treasurer appointment listing certain candidates supported by the committee;
6. failing to include in its committee name the full name of certain candidates;
7. failing to file a declaration of intent to exceed the expenditure limits provided by the Judicial Campaign Fairness Act;
8. knowingly making a political contribution in violation of Chapter 253, Election Code;
9. knowingly accepting a prohibited corporate political contribution; and
10. failing to report expenditures to a general-purpose committee.

III. Facts Supported by Credible Evidence

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

1. Commission records disclose that the Committee for a Well-Qualified Judiciary filed a campaign treasurer appointment with the commission on February 7, 1994, which named the respondent as treasurer. According to commission records, the committee was a specific-purpose committee created to support five candidates running for judicial positions on a court of appeals. At all times relevant to this complaint, the respondent was the committee's campaign treasurer. A dissolution report was filed on January 22, 1997.
2. Commission records show that the respondent, as campaign treasurer of the Committee for a Well-Qualified Judiciary, filed the committee's runoff report for the 1996 primary election eight days late and paid an \$800 late fine for that report. Commission records also show that the respondent filed the committee's January 1997 semiannual report seven days late and paid a \$100 late fine for that report.
3. In support of Allegation No. 1, the complainant submitted copies of the respondent's committee's 8-day before election and runoff reports for the 1996 primary election, and the committee's July 1996 semiannual report. Those reports show that the committee accepted contributions totaling \$104,600 from judicial candidates and officeholders and then contributed that exact amount to two general-purpose committees, Citizens for American Restoration, P.A.C. and Conservative Republicans of Harris County, in the same reporting period in which they were accepted. The complainant also submitted a chart showing numerous instances in which the respondent's committee accepted a contribution from a judicial candidate and, on the same day, contributed the exact amount of that contribution to one of the general-purpose committees. The two general-purpose committees have the same campaign treasurer.
4. At issue in Allegation No. 2 are two of the committee's reports, the 8-day before election and runoff reports for the 1996 primary election. The cover sheets of those reports list numerous candidates supported by the committee. The committee's reports also disclose that all of those candidates made contributions to the committee. Those contributions

were almost immediately contributed to two general-purpose committees, Citizens for American Restoration, P.A.C. and Conservative Republicans of Harris County. The complainant submitted copies of sample ballots prepared and distributed by the recipient general-purpose committees in which they recommend voting for particular candidates, including the candidates supported by the respondent's committee.

5. The candidates' reports do not disclose that they received notice from the respondent that the respondent's committee accepted political contributions or made political expenditures on their behalf.
6. At issue in Allegation No. 3 are two of the committee's reports, the 8-day before election and runoff reports for the 1996 primary election. The cover sheets of those reports list numerous candidates supported by the committee. The only expenditures the committee made were in the form of contributions to two general-purpose committees, Citizens for American Restoration, P.A.C. and Conservative Republicans of Harris County.
7. At issue in Allegation Nos. 4 and 5 are the committee's 8-day before election and runoff reports for the 1996 primary election. The cover sheet of those reports disclose that the committee supported candidates other than those it identified on the committee's campaign treasurer appointment. The respondent did not notify the commission that the candidate information on the committee's campaign treasurer appointment had changed.
8. At issue in Allegation No. 6 are the cover sheets of six of the committee's campaign finance reports.¹ Those reports disclose that the committee supported candidates other than those listed on the committee's campaign treasurer appointment and that at least ten of those candidates were seeking offices covered by Section 252.005(1), Election Code. The respondent did not file an amended campaign treasurer appointment to change the name of the committee to include the names of those ten candidates.
9. At issue in Allegation No. 7 is the committee's runoff report for the 1996 primary election which discloses on the cover sheet that the respondent's committee supported seven candidates, four of whom were seeking judicial positions subject to the Judicial Campaign Fairness Act. The report discloses that expenditures in the amount of \$80,000 were made as political contributions to two general-purpose committees, Citizens For American Restoration, P.A.C. and Conservative Republicans of Harris County. The expenditure schedule does not include the name of any candidate supported by the expenditures.
10. In support of Allegation No. 8, the complainant refers to the committee's January 1995 semiannual report, which discloses that on November 3, 1994, the committee made a political expenditure in the amount of \$1,090 to an unincorporated sole proprietorship and lists "political contribution" as the purpose of the expenditure.
11. At issue in Allegation No. 9 is a \$10,000 political contribution, which the committee's 8-day before election report for the 1994 general election discloses was accepted on

¹ The relevant reports are the 30-day and 8-day before election reports for the 1994 general election, January 1995 and July 1995 semiannual reports, 8-day before election report for the 1996 primary election, and runoff report for the 1996 primary election.

October 7, 1994. The contribution was from a limited partnership that had corporate partners.

12. At issue in Allegation No. 10 are two \$1,000 contributions and one \$500 contribution allegedly made by the respondent's committee to a general-purpose committee, Citizens for American Restoration, P.A.C., on March 5, 1996, and April 4, 1996. The general-purpose committee's runoff report for the 1996 primary election and July 1996 semiannual report disclose that it accepted those contributions from the respondent's committee, but the respondent's committee's reports do not disclose that it made those contributions.

IV. Findings and Conclusions of Law

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

Allegation No.1 (Contributions or Expenditures in Another's Name):

1. A person may not knowingly make or authorize a political contribution or political expenditure in the name of or on behalf of another unless the person discloses the other's name in order for the proper disclosure to be made. Section 253.001, Election Code, as that section appeared during the period of the alleged violations.
2. The complainant alleges that the respondent's specific-purpose committee acted as a "pass through" by accepting contributions from judicial candidates and officeholders and then giving those contributions to two general-purpose committees, Citizens for American Restoration, P.A.C. and Conservative Republicans of Harris County, almost immediately after they were received by the respondent's committee. The complainant alleges that the respondent failed to notify the recipient general-purpose committees that the judicial candidates and officeholders were the true sources of the contributions.
3. In response to this allegation, the respondent swears that "no contributions or expenditures were made in the name of or on behalf of another" and that the committee's "reports always showed the true contributor and the true payee on expenditures." The respondent also swears that the committee "raised contributions by telling potential contributors that the funds would be used to support conservative, well-qualified judicial candidates" and that the committee "then determined what would be the best use of those funds and spent them accordingly."
4. Although the complainant's evidence may show that the respondent's committee, its contributors, and the two general-purpose committees have connections and may have had a clear plan for the transactions disclosed by their campaign finance reports, there is insufficient evidence that the respondent's committee was making contributions to the general-purpose committees at the direction of the candidates or officeholders that contributed to the respondent's committee. Thus, there is insufficient evidence that the respondent violated Section 253.001, Election Code.

Allegation No. 2 (Notice to Candidate and Officeholder of Contributions and Expenditures):

5. The campaign treasurer of a specific-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder is required to

deliver written notice of that fact to the affected candidate or officeholder not later than the end of the reporting period in which the reportable activity occurs. Section 254.128, Election Code. In turn, a candidate's or officeholder's report is required to include certain information for each committee from which it receives such a notice. Sections 254.061 and 254.091, Election Code.

6. In response to Allegation No. 2, the respondent swears that the committee "provided the appropriate notice to all candidates supported" and "clearly identified all candidates that it was supporting on its reports of contributions and expenditures." The respondent does not specify the content or nature of the notice.
7. There is insufficient evidence to determine whether the respondent's committee made expenditures on behalf of the candidates during the reporting periods at issue. The reports of the respondent's committee do not disclose any expenditures other than those made to Citizens for American Restoration, P.A.C. and Conservative Republicans of Harris County. Therefore, there is insufficient evidence to determine whether the respondent was required to give notice to any candidates, and insufficient evidence of a violation of Section 254.128, Election Code.

Allegation No. 3 (Identification of Candidates Supported by Expenditures):

8. Each report filed by the campaign treasurer of a specific-purpose committee is required to include 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 person to whom the payment is made, and the date and purpose of the payment. Section 254.031(3), Election Code. Additionally, each report is required to include the name of each candidate supported or opposed by the committee, indicating whether the committee supports or opposes each candidate. Section 254.121, Election Code.
9. In response to Allegation No. 3, the respondent swears that the committee "clearly identified all candidates that it was supporting on its reports of contributions and expenditures."
10. Although the cover sheets of the committee's reports at issue identify the candidates supported by the committee, there is insufficient evidence that the respondent made expenditures to support those candidates during the reporting periods at issue. There is therefore insufficient evidence that the respondent violated Sections 254.031(3) and 254.121, Election Code.

Allegation Nos. 4 and 5 (Notice of Change in Committee Status; Failure to Amend Campaign Treasurer Appointment):

11. In Allegation Nos. 4 and 5, the complainant alleges that the respondent's committee was formed as a specific-purpose committee, but that it changed its status and conducted its activities as a general-purpose committee without filing a new campaign treasurer appointment as a general-purpose committee and before accepting \$500 in political contributions as a general-purpose committee. Alternatively, the complainant alleges that if the respondent's committee was a specific-purpose committee, the respondent failed to file an amended campaign treasurer appointment when the committee supported

candidates other than those identified when the committee filed its campaign treasurer appointment.

12. A general-purpose committee is defined in relevant part as:

“A political committee that has among its principal purposes supporting or opposing two or more candidates who are unidentified; or assisting two or more officeholders who are unidentified.”

13. A specific-purpose committee is defined in relevant part as:

“A political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes supporting or opposing one or more candidates, all of whom are identified and are seeking offices that are known; or assisting one or more officeholders, all of whom are identified.”

14. The campaign treasurer appointment for a specific-purpose committee is required to list the candidates that the committee supports or opposes. Section 252.0031(a), Election Code, and Section 20.309, Ethics Commission Rules. If there is a change in the name of or office sought by a candidate supported by the committee, the campaign treasurer is required to notify the filing authority of the change within 24 hours of the change. Section 252.0031(a), Election Code, and Section 20.311, Ethics Commission Rules. The campaign treasurer of a specific-purpose committee is also required to deliver written notice to the filing authority if it changes its status and becomes a general-purpose committee. Section 254.129, Election Code. The notice must indicate that future filings will be made with the commission.

15. In response to these allegations, the respondent swears that the committee “did not have among its principal purposes supporting unidentified candidates or getting involved in offices that were unknown.” The respondent also swears that the committee “clearly supported identified candidates” and that it “attempted to comply with the SPAC (specific-purpose committee) reporting procedures as best they could.”

16. Because the cover sheets of the committee’s reports at issue disclose that the committee supported candidates other than those identified on the committee’s campaign treasurer appointment and because the respondent did not notify the commission that the candidate information on the committee’s campaign treasurer appointment had changed, there is credible evidence that the respondent violated Section 252.0031(a), Election Code, and Section 20.311, Ethics Commission Rules.

Allegation No. 6 (Name of Specific-Purpose Committee):

17. The name of a specific-purpose committee supporting a candidate for an office specified by Section 252.005(1), Election Code,² is required to include the name of the candidate

² The offices listed in Section 252.005(1), Election Code, as that section appeared during the period of the alleged violations, are as follows: a statewide office, a district office filled by voters of more than one county, a state senator, a state representative, or the State Board of Education.

supported by the committee. Section 252.0031(b), Election Code. Under commission rules, the committee's campaign treasurer is required to notify the filing authority of any change in the committee's name no later than the tenth day after the date on which the change occurs. Sections 20.309 and 20.311, Ethics Commission Rules.

18. In response to Allegation No. 6, the respondent swears that the committee "believed it was properly reporting the names of the candidates that it supported on its reports of contributions and expenditures." The respondent also swears that the committee "was not attempting to deceive or hide the names of the candidates it supported."
19. For alleged violations that are not also criminal offenses, Ethics Commission rules prohibit the commission from considering an allegation based on facts that occurred more than three years before the date the complaint is filed. Section 12.5, Ethics Commission Rules. A violation of Section 252.0031, Election Code, is not a criminal offense, and thus the three-year statute of limitations applies.
20. On February 7, 1994, more than three years before the complaint was filed, the respondent's committee filed a campaign treasurer appointment to support five candidates running for court of appeals judgeships. Any failure at that time to include the candidates' names in the name of the committee would be outside of the commission's sworn complaint jurisdiction.
21. Because the cover sheets of the committee's campaign finance reports at issue disclose that the committee supported at least ten candidates who were seeking offices covered by Section 252.005(1), Election Code, and because the respondent did not file an amended campaign treasurer appointment to change the name of the committee to include the names of the ten candidates in question, there is credible evidence that the respondent violated Section 252.0031(b), Election Code, and Section 20.311, Ethics Commission Rules.

Allegation No. 7 (Filing Declaration of Intent to Exceed Expenditure Limits):

22. A political committee, other than one connected to a political party, is subject to limits on expenditures to support a judicial candidate who is subject to the Judicial Campaign Fairness Act unless the committee files a written declaration of intent to exceed those limits. Section 253.163, Election Code. The limit is \$25,000 for expenditures supporting statewide candidates, and \$5,000 for other candidates. *Id.*
23. In response to Allegation No. 7, the respondent swears that the committee "did not make expenditures supporting particular judicial candidates at this time, it made contributions to general-purpose committees."
24. Because there is insufficient evidence to determine what amount of the expenditures in question were attributable to each judicial candidate, the commission cannot determine whether any expenditure exceeded the expenditure limit. Thus, there is insufficient evidence to determine if the respondent was required to file the declaration required by Section 253.163, Election Code.

Allegation No. 8 (Unlawful Contribution):

25. The complainant alleges that the respondent violated Section 253.003(a), Election Code, by using political contributions to make a political contribution to a business that is neither a candidate nor a political committee.
26. In response to Allegation No. 8, the respondent swears that “the expenditure was not illegal and was appropriately reported.”
27. A person commits an offense that is a Class A misdemeanor if the person knowingly makes a political contribution or political expenditure in violation of Chapter 253, Election Code. Sections 253.003(a) and 253.004(a), Election Code. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules. The statute of limitations for a Class A misdemeanor is two years from the date of the offense. Article 12.02, Code of Criminal Procedure.
28. Allegations relating to the \$1,090 expenditure made on November 3, 1994, are based on alleged offenses that occurred more than two years before the complaint was filed, and are therefore not within the commission’s sworn complaint jurisdiction.

Allegation No. 9 (Contributions From Corporations):

29. A person may not knowingly accept a political contribution the person knows to have been made in violation of Chapter 253. Section 253.003(b), Election Code. That chapter prohibits corporations from making political contributions to specific-purpose political committees that support candidates. *See* Subchapter D, Chapter 253, Election Code. In September 1994, the commission concluded that a partnership that has corporate partners is subject to the same restrictions on political activities as those that apply to corporations. Ethics Advisory Opinion No. 221 (1994).
30. In response to this allegation, the respondent swears that the committee checked twice with the limited partnership and was assured that the contribution was permissible. He swears that the committee did not knowingly accept a corporate contribution.
31. There is credible evidence that the respondent did not know that the contribution was made in violation of Chapter 253, Election Code, and thus credible evidence that a violation of Section 253.003(b), Election Code, did not occur.

Allegation No. 10 (Failure to Report Political Expenditures):

32. A person filing a campaign finance report must include specific information regarding political contributions and expenditures that exceed \$50 in the aggregate from or to a single source during a reporting period. Sections 254.031(1) and (3), Election Code. A person who is required by Chapter 254, Election Code, to file a report commits an offense if the person knowingly fails to include required information in the report. Section 254.041, Election Code.
33. In response to this allegation, the respondent swears to the following:

[The Committee for a Well-Qualified Judiciary] properly reported all its contributions and expenditures. I have reviewed my records and no contributions to Citizens for American Restoration PAC were made on or about the above-referenced days. All contributions to Citizens for American Restoration PAC or any other organization or PAC were properly reported on the day they were made. Citizens for American Restoration PAC must have erred in its reporting. We did not err in our reporting. No contributions to Citizens for American Restoration PAC were made on or about March 5, 1996, and/or April 4, 1996.

34. Citizens for American Restoration did not respond to the staff's inquiries regarding the contributions in question.
35. Based on the respondent's response in which he swears that his committee did not make the contributions in question, and Citizens for American Restoration's sworn reports showing that they accepted those contributions, there is contradictory evidence as to whether the respondent made the contributions, and thus insufficient evidence to determine whether a violation occurred. Thus, there is insufficient evidence to determine whether the respondent was required but failed to report political expenditures made in the form of contributions to Citizens for American Restoration.

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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 16 and 21, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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, consequences, extent, and gravity of the violations, after considering the fact that the respondent had previous reporting violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$4,000 civil penalty for the violations described under Section IV, Paragraphs 16 and 21.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of Sworn Complaints SC-970420, SC-970420A, SC-970420B, SC-970420C, and SC-970420D;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$4,000 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 8, 2000, and;
4. that the executive director shall promptly refer Sworn Complaints SC-970420, SC-970420A, SC-970420B, SC-970420C, and SC-970420D either to the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of Sworn Complaints SC-970420, SC-970420A, SC-970420B, SC-970420C, and SC-970420D proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

Frank Harmon, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director