

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FREDERICK EDWARDS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280132 and SC-280247

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaints SC-280132 and SC-280247. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.0351, 254.031(a)(8), and 254.063 of the Election Code, laws 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

Sworn complaint SC-280132 alleges that the respondent failed to properly report total political contributions maintained as of the last day of the reporting period on his July 2006, January 2007, and July 2007 semiannual campaign finance reports. The complaint also alleges that the respondent failed to timely file his July 2006 semiannual report.

Sworn complaint SC-280247 alleges that the respondent failed to properly report total political contributions, loans, and total political contributions maintained as of the last day of the reporting period on his January 2008 semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. During the period at issue, the respondent was a state district judge for the Ninth Judicial District (Montgomery County).
2. With respect to sworn complaint SC-280132, Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5. Failing to timely file or filing incomplete campaign finance reports is a Class C misdemeanor. The statute of

- limitations for misdemeanors is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Therefore, the commission does not have jurisdiction to consider the allegations of reporting violations that occurred more than two years before the complaint was filed.
3. The respondent filed his original July 2006 semiannual report on August 7, 2006. The report discloses zero political contributions maintained as of the last day of the reporting period. The commission previously considered this report administratively and imposed a \$500 late-filing penalty, which the respondent paid.
 4. The respondent's original January 2007 semiannual report discloses zero political contributions maintained as of the last day of the reporting period.
 5. The respondent's original July 2007 semiannual report discloses approximately \$50 as the total amount of political contributions maintained as of the last day of the reporting period.
 6. The respondent's original January 2008 semiannual report discloses \$1,500 as the total amount of political contributions maintained as of the last day of the reporting period. The report discloses zero political contributions during the reporting period, \$1,500 as the total amount of political expenditures during the reporting period, and zero as the total principal amount of all outstanding loans as of the last day of the reporting period. Schedule E of the report (used for itemizing loans) discloses a \$3,000 loan from the respondent on December 3, 2007. Schedule F of the report (used for itemizing political expenditures) discloses one political expenditure on December 11, 2007, of \$1,500 to the Montgomery County Republican Party for the purpose of "filing fee for 2008 primary."
 7. The respondent acknowledges that he failed to properly disclose the total amount of political contributions maintained as of the last day of the reporting period on his July 2006, January 2007, and July 2007 semiannual reports. The respondent swears that he was unable to figure out how to disclose the amount of political contributions maintained when he filed these reports electronically. (He had correctly reported political contributions maintained on his July 2005 semiannual report.) As to the loan at issue on the respondent's January 2008 semiannual report, the respondent swears that he believed he could loan the campaign a lump sum amount.
 8. The respondent filed corrections to all of the reports at issue.
 9. The respondent's corrected July 2006 semiannual report discloses approximately \$810 as the total amount of political contributions maintained as of the last day of the reporting period.
 10. The respondent's corrected January 2007 semiannual report discloses approximately \$390 as the total amount of political contributions maintained as of the last day of the reporting period.

11. The respondent's corrected July 2007 semiannual report discloses approximately \$330 as the total amount of political contributions maintained as of the last day of the reporting period.
12. The respondent's corrected January 2008 semiannual report discloses approximately \$240 as the total amount of political contributions maintained as of the last day of the reporting period. The corrected report discloses zero political contributions during the reporting period, \$1,500 as the total amount of political expenditures during the reporting period, and zero as the total principal amount of all outstanding loans as of the last day of the reporting period. In the affidavit that accompanies the corrected report, the respondent swears that he transferred \$3,000 from his personal account to his campaign account. The respondent swears he has amended the report to reflect a political expenditure ("filing fee") from personal funds, and that he has removed the remaining ("extra") personal funds from his campaign account. The respondent swears the corrected report reflects "the actual balance on hand at the end of the year." Schedule G of the report (used for itemizing political expenditures from personal funds) discloses one political expenditure on December 11, 2007, of \$1,500 to the Montgomery County Republican Party for the purpose of "filing fee for 2008 primary." The report discloses no activity on Schedules E or F.

IV. Findings and Conclusions of Law

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

Failure to Timely File the July 2006 Semiannual Campaign Finance Report

1. A candidate shall file two reports for each year, the first report shall be filed not later than July 15, and cover the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30; the second report shall be filed not later than January 15, and cover the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
2. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21.
3. The deadline for filing the July 2006 semiannual report was Monday, July 17, 2006. The respondent filed his July 2006 semiannual report on August 7, 2006. Therefore, as to the July 2006 semiannual report, there is credible evidence of a violation of section 254.063 of the Election Code. The commission considered this violation in the administrative process and the respondent paid a \$500 late-filing penalty and therefore the commission does not impose an additional fine in connection with this violation.

Failure to Properly Report Political Contributions

4. Each campaign finance report filed by a candidate must include, as of the last day of the 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).
5. The evidence indicates that the respondent failed to properly disclose the total amount of political contributions maintained as of the last day of the reporting period on his July 2006, January 2007, July 2007, and January 2008 semiannual reports. The evidence indicates that the respondent filed corrections to the reports at issue to disclose the total amount of political contributions maintained as of the last day of the reporting periods at issue. However, at the time the reports were required to be filed, the respondent failed to properly disclose this information. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.
6. Each campaign finance report is required to include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
7. There is no evidence that the respondent failed to properly report the total amount of political contributions accepted during the reporting period on his January 2008 semiannual report. Therefore, as to the January 2008 semiannual report, there is credible evidence of no violation of section 254.031(a)(6).

Failure to Properly Report Loans and Political Expenditures From Personal Funds

8. Each campaign finance report filed by a candidate is required to include the amount of loans that in the aggregate exceed \$50 made during the reporting period to the candidate, the dates the loans are made, the interest rate, maturity date, collateral, full name and address of the lender, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
9. If a candidate transfers money from a personal account to an account used for candidate purposes, no reportable transaction has occurred. *See* Ethics Advisory Opinion No. 258 (1995).
10. Political expenditures from personal funds for which a candidate intends to seek reimbursement must be disclosed on Schedule G, and must indicate that reimbursement is intended. ELEC. CODE §§ 253.035(h), 254.031(a)(3).

11. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
12. On his original January 2008 semiannual report, the respondent disclosed as a loan a \$3,000 transfer of funds from the respondent's personal account to the respondent's campaign account. That report disclosed a total of \$1,500 in political expenditures. Section 253.0351 of the Election Code requires a candidate to report only the amount *expended* from personal funds as a loan. The respondent reported more than the amount actually expended. In response to the complaint, the respondent filed a corrected January 2008 semiannual report, which discloses one \$1,500 political expenditure from personal funds on Schedule G instead of a lump sum loan. The respondent swears that the corrected report reflects the political expenditure made from personal funds and that he removed the "extra" personal funds from the campaign account. Therefore, with respect to the respondent's original January 2008 semiannual report, there is credible evidence of a violation of section 253.0351 of the Election Code.
13. When a candidate chooses to report expenditures from the candidate's personal funds as a loan, the candidate may, but is not required to, report such expenditures on the cover page of the report under "aggregate principal amount of all outstanding loans as of the last day of the reporting period." Ethics Advisory Opinion No. 349 (1996). Because the Election Code does not require this information to be reported, the respondent's failure to include it on his January 2008 semiannual report does not constitute a violation of the Election Code. Therefore, there is credible evidence of no violation of section 254.031(a)(2) of the Election 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 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 candidate shall file two reports for each year, the first report shall be filed not later than July 15, and the second report shall be filed not later than January 15. The respondent acknowledges that each campaign finance report is required to include the total amount of political contributions maintained as of the last day of the

reporting period. The respondent acknowledges that if a candidate makes political expenditures from personal funds the candidate may report the amount expended as a loan. 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 \$1,000 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-280132 and SC-280247.

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

Frederick Edwards, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director