

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARIO RAMIREZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280289

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 6, 2009, to consider sworn complaint SC-280289. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035 and 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules, laws and rule 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 converted political contributions to personal use. The complaint also alleged that the respondent failed to properly disclose the purposes of political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is a judge for the 332nd District Court and held that office during the period at issue.
2. The allegations are based on expenditures made by the respondent from 1999 through December 2007.

Conversion of Political Contributions to Personal Use

Statute of Limitations

3. Ethics Commission rules prohibit the commission from considering an allegation if the alleged violation is not a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(a). There is no criminal offense for a violation of section 253.035 of the Election Code (conversion of political contributions to personal use). ELEC. CODE § 253.035. Thus, the commission may not consider allegations relating to expenditures that were made before February 22, 2005 (more than three years before the complaint's postmark date).

Country Club Dues

4. The respondent's July 2005, January 2006, July 2006, January 2007, July 2007, and January 2008 semiannual reports disclosed 31 expenditures totaling approximately \$12,860 to Cimarron Country Club for the purpose of "MONTHLY DUES AND FEES" or "MEMBERSHIP FEES AND DUES," and three expenditures totaling approximately \$1,850 to McAllen Country Club for the purpose of "MONTHLY FEES AND DUES" or "MONTHLY DUES AND FEES."
5. The respondent's July 2007 semiannual report also disclosed an expenditure of \$10,329.64 to McAllen Country Club for "PAYMENT FOR FUNDRAISING FUNCTION EXPENSES," and the respondent's January 2008 semiannual report disclosed an expenditure of \$933.96 to McAllen Country Club for "EXPENSES FOR FUNDRAISING FUNCTION." The complaint did not allege that either of these expenditures was a violation.

Clothing

6. The respondent's January 2006 semiannual report disclosed one expenditure of \$1,900 for the purpose of "PURCHASE OF SUITS, SHIRTS, TIES FOR CAMPAIGNING," and one expenditure for approximately \$100 for the purpose of "SHIPPING FEES FOR SUITS,SHIRTS & TIES." In addition, although not specifically alleged, the respondent's July 2007 semiannual report disclosed one expenditure totaling approximately \$700 for the purpose of "PURCHASE OF SUITS SHIRTS TIES FOR CAMPAIGNING."

Dry Cleaning

7. The respondent's July 2005 and January 2006 semiannual reports disclosed two expenditures totaling approximately \$190 to D & M Cleaners for the purpose of "DRY CLEANING OF ROBES,ETC." or "DRY CLEANING OF ROBES,SUITS,ETC."

Fitness Center Dues

8. The respondent's January 2007 semiannual report disclosed one expenditure totaling \$400 to Cornerstone Fitness Center for the purpose of "MEMBERSHIP FEES AND DUES." In addition, although not specifically alleged, the respondent's July 2005 semiannual report disclosed one expenditure totaling \$400 to Cornerstone Fitness Center for the purpose of "MEMBERSHIP FEES AND DUES."

Physician Visit

9. The respondent's January 2006 semiannual report disclosed an expenditure of approximately \$590 to Mr. Mario Ramirez for the purpose of "REIMBURSEMENT FOR PHYSICIAN VISIT TO SAN ANTONIO, TX."

Season Tickets

10. The respondent's January 2008 semiannual report disclosed an expenditure of approximately \$2,110 to NBA Development League for the purpose of "SEASON TICKETS," and an expenditure of approximately \$2,100 to RGV Vipers for the purpose of "PURCHASE OF SEASON TICKETS."

Holiday Wine & Liquor

11. The respondent's July 2005, July 2006, July 2007, and January 2008 semiannual reports disclosed nine expenditures totaling approximately \$5,450 to Holiday Wine and Liquor for the purpose of "PURCHASE OF MATERIALS AND SUPPLIES," "PURCHASE OF SUPPLIES FOR GIFTS," "PURCHASE OF SUPPLIES," and "PURCHASE OF CHRISTMAS SUPPLIES\n."

Failure to Properly Disclose Purposes of ExpendituresStatute of Limitations

12. 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(a). The criminal offense for a violation of section 254.031 of the Election Code is a Class C misdemeanor. ELEC. CODE § 254.041(b). The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Thus, the commission may not consider reporting allegations relating to expenditures that were required to be disclosed in a report due before February 22, 2006 (more than two years before the complaint's postmark date).

Holiday Wine & Liquor

13. The complaint alleged that the purposes of approximately \$5,180 in political expenditures to Holiday Wine and Liquor were not sufficiently disclosed. The reports disclosed the purpose of the expenditures at issue as: “PURCHASE OF MATERIALS AND SUPPLIES,” “PURCHASE OF SUPPLIES FOR GIFTS,” “PURCHASE OF SUPPLIES,” and “PURCHASE OF CHRISTMAS SUPPLIES\n [sic].” In response, the respondent swore that the wine and liquor expenses were campaign expenses, and were for specific campaign events or gifts for campaign workers and supporters.

14. In response to the conversion allegations, the respondent swore that many of the alleged expenses are outside of the three year statute of limitations and that:

The other reported expenses are either campaign related expenses or expenses related to my public office. For example, I have held my most successful campaign events at the Cimarron Country Club that is the purpose for which I have held that membership. My family membership is at the McAllen Country Club and I personally pay those dues. The McAllen County [sic] Club expenses [the complainant] is referring to are for specific campaign events held at the club. Under the “Personal clothing” heading, there are three expenses listed. One is more then [sic] three years old. Another is a shipping expense. The remaining expense was for campaign suits, shirts and ties. The dry cleaning bills are for my judicial robes and on a very few occasions for the clothing I was wearing under my judicial robe when the clothing got soiled while performing my public duties. The December 13, 2005 expense of \$589.46 was a reimbursement to me for travel expenses to a public office related meeting. I did see a doctor in San Antonio on that trip, but the primary purpose for the trip was for a meeting I was required to attend. The sports tickets are directly related to my campaign. I use those tickets to thank my supporters and campaign workers. When I do attend a game, it is typically with my staff or supporters, and is one of the best places in the County to campaign. The wine and liquor expenses are also campaign expenses. These are charges for specific campaign events or gifts for campaign workers and supporters.

The August 2, 2006 expense of \$400 to Cornerstone was a surprise to me as that was a personal expense and was mistakenly paid by the campaign. I will promptly reimburse the campaign account.

In summary, all of the expenses complained of (with the one exception noted) were made to defer ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder.

15. The reports at issue disclosed expenditures to the Cimarron Country Club for monthly membership dues and fees. The reports at issue did not disclose any expenditures to the Cimarron Country Club for fundraisers or any other activity.
16. In response to staff's request for additional information regarding the use of the Cimarron Country Club membership, the respondent provided an affidavit in which he stated:

My most successful campaign events have been at the Cimarron Country Club, located on the west side of Hidalgo County, close to Mission, Texas. Even though the Cimarron Club is miles away from where I live, I nonetheless maintained a membership there because that is the only way I can use the facilities for officeholder and campaign purposes, including dining and playing golf with constituents. I use my membership exclusively for officeholder and campaign purposes. Once in a blue moon, I will take my family to special events at Cimarron, when there are large family gatherings, as this gives me an opportunity to visit with many of my key constituents. Many of my constituents are members there. I do not like to have constituents pay for my meals, and the only way I can avoid that situation is by having my own membership there.

Additionally, I have oversight responsibility for the Hidalgo County juvenile probation department, for which I have periodic meetings in Austin, Texas. I have also served on several state bar/judicial committees which meet in Austin. I maintained the membership at Cimarron not only for local officeholder and campaign use, but also because I received reciprocal privileges at a similar Club in Austin, which I used to take constituents for dining and golf. But for my officeholder and campaign duties, I would have no need for this membership.

17. The respondent provided additional documentation to the commission regarding the expenditures to McAllen Country Club, and swore that all but approximately \$417 of the expenditures at issue were for candidate or officeholder related activities. The respondent did not dispute that the expenditures at issue totaling approximately \$417 were for a personal use, and swore that he repaid his campaign for this amount.
18. On May 12, 2009, the respondent filed corrected reports to change the purpose of the expenditures at issue to Holiday Wine & Liquor from "PURCHASE OF MATERIALS AND SUPPLIES," "PURCHASE OF SUPPLIES FOR GIFTS," "PURCHASE OF SUPPLIES," and "PURCHASE OF CHRISTMAS SUPPLIES\n [sic]" to "PURCHASE OF GIFT BASKETS FOR KEY CAMPAIGN SUPPORTERS," and "PURCHASE OF WINE & BEER FOR POLITICAL FUNCTION."

19. The respondent provided evidence that he reimbursed \$3,911.86 to his campaign.

IV. Findings and Conclusions of Law

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

Conversion of Political Contributions to Personal Use

1. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
2. “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. *Id.* § 253.035(d)(1).

Country Club Dues

3. The complaint alleged that the respondent converted political funds to personal use when he made expenditures for country club dues and fees. With regard to the expenditures to Cimarron Country Club, the respondent swore that he held campaign events at the Cimarron Country Club, that he held the membership for officeholder and campaign purposes, and that were it not for his position as a candidate or officeholder he would not need the membership. Although the respondent swore that he occasionally took his family to the Cimarron Country Club, he swore that this gave him an opportunity to visit with his key constituents. The evidence is insufficient to show that the expenditures to Cimarron Country Club primarily furthered individual or family purposes not connected with the respondent’s performance of duties or activities as a candidate for or holder of a public office. Therefore, there is insufficient evidence of a violation of section 253.035(a) of the Election Code with regard to the expenditures at issue to Cimarron Country Club.
4. With regard to the allegations related to approximately \$1,850 in expenditures to McAllen Country Club, the respondent swore that all but approximately \$417 of the \$1,850 in expenditures at issue were for candidate or officeholder purposes. Thus, the evidence indicates that the payment of approximately \$417 to the McAllen Country Club was a personal use. Therefore, there is credible evidence of violations of section 253.035(a) of the Election Code with regard to those expenditures. There is insufficient evidence of a violation of that section with respect to approximately \$1,430 in expenditures.

Clothing

5. The commission has determined that an officeholder may use political contributions to pay clothing expenses if the clothing: (1) is of a type appropriate for the performance of duties or activities of the office held, (2) is not adaptable to general usage as ordinary clothing, and (3) is not so worn. *See* Ethics Advisory Opinion Nos. 104 (1992) and 407 (1998).
6. The complaint alleged that the respondent converted political funds to personal use when he made expenditures related to the purchase of personal clothing. In response, the respondent swears that the purposes for the two clothing related expenses at issue were for campaign suits, shirts and ties, and for shipping expenses. The respondent's July 2007 semiannual report also disclosed a political expenditure of \$700, for the "PURCHASE OF SUITS SHIRTS TIES FOR CAMPAIGNING." The total of the expenditures at issue is approximately, \$2,700.
7. The commission has determined that an officeholder may only use political funds to purchase clothing that is not adaptable to general usage as ordinary clothing. Suits, shirts, and ties are adaptable to general usage as ordinary clothing. Thus, the purchase and shipping of such items with political funds is a personal use. Therefore, there is credible evidence of violations of section 253.035(a) of the Election Code with regard to these three expenditures.

Dry Cleaning

8. The commission has held that legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin and that such an expenditure would constitute a conversion of a political contribution to personal use. *See* Ethics Advisory Opinion No. 104 (1992).
9. The complaint alleged that the respondent converted political funds to personal use when he made expenditures for dry cleaning. In response, the respondent swore that "the dry cleaning bills are for my judicial robes and on a very few occasions for the clothing I was wearing under my judicial robe when the clothing got soiled while performing my public duties."
10. The expenditures at issue were incurred by a judicial officeholder for dry cleaning judicial robes, and the clothing worn underneath the judicial robes, that were used while the respondent was acting in his official capacity. Under these specific facts, the expenditures at issue were not for a purpose that primarily furthered individual or family purposes not connected with the performance of the respondent's duties. Thus, the expenditures were not a conversion of political contributions to personal use. Therefore, there is credible evidence of no violation of section 253.035 of the Election Code with regard to the payment of dry cleaning expenses.

Fitness Center Dues

11. The complaint alleged that the respondent converted political funds to personal use when he made expenditures for fitness center fees and dues. In his response, the respondent swore that “the August 2, 2006 expense of \$400 to Cornerstone was a surprise to me as that was a personal expense and was mistakenly paid by the campaign. I will promptly reimburse the campaign account.” The respondent’s July 2005 semiannual report also disclosed a political expenditure of \$400, for “MEMBERSHIP FEES AND DUES,” to Cornerstone Fitness Center. Thus, there is \$800 at issue.
12. Using campaign or officeholder funds to purchase a gym membership furthers an individual purpose not connected with the performance of duties or activities of a candidate for or holder of a public office. Therefore, there is credible evidence of violations of section 253.035(a) of the Election Code with regard to both expenditures for membership fees and dues to the fitness center.

Physician Visit

13. The complaint alleged that the respondent converted political funds to personal use when he made an expenditure for a visit to a physician. The evidence raises some ambiguity with respect to the purpose of the expenditure. The report at issue disclosed the purpose of the expenditure to be a “reimbursement for physician visit to San Antonio, TX,” without reference to any other purpose. Use of political funds for expenses for a visit to a physician would be a conversion of political funds to personal use. However, the respondent swore in his response that the primary purpose for the expenditure was for travel expenses to a public office related meeting, and that he was required to attend the meeting. There is no additional evidence about the purpose of the expenditure. Thus, it is unclear whether or not the expenditure furthered an individual purpose not connected with the performance of duties or activities of a candidate for or holder of a public office. Therefore, there is insufficient evidence of a violation of section 253.035(a) of the Election Code with regard to this expenditure.

Season Tickets

14. The complaint alleged that the respondent converted political funds to personal use when he made political expenditures for season sports tickets. In response, the respondent swore that “[t]he sports tickets are directly related to my campaign. I use those tickets to thank my supporters and campaign workers. When I do attend a game, it is typically with my staff or supporters, and is one of the best places in the County to campaign.” The evidence is insufficient to show that the expenditures at issue primarily furthered individual or family purposes not connected to the respondent’s performance or duties as a candidate for or officeholder of a public office. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.

Holiday Wine & Liquor

15. The complaint alleged that the respondent converted political funds to personal use when he made political expenditures to Holiday Wine and Liquor. In response, the respondent swore that the wine and liquor expenses were campaign expenses, and were for specific campaign events or gifts for campaign workers and supporters. The evidence is insufficient to show that the expenditures at issue primarily furthered individual or family purposes not connected to the respondent's performance or duties as a candidate for or officeholder of a public office. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) of the Election Code in connection with the expenditures.

Failure to Properly Disclose Purposes of Expenditures

16. A campaign finance report must 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 persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
17. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61(a).
18. The general description of the purpose of the expenditures at issue is 'supplies.' However, merely disclosing "supplies" does not state the purpose of the expenditure, i.e. beer and wine for campaign event. Further, although the vendor in this case is a particular type of retail store, without further description the purchases may have been made for any number of items that are available at various retail stores. Thus, under these circumstances, the respondent did not sufficiently describe the purpose or the categories of goods or services received. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules in connection with the expenditures.

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 a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent acknowledges that “personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office, and does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. In addition, the respondent acknowledges that a campaign finance report must 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 persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. 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 violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$900 civil penalty, contingent upon the respondent reimbursing the amount at issue for personal use (approximately \$3,910) to his political funds and correcting the reports at issue to sufficiently describe the purposes of the political expenditures at issue and the categories of goods or services received for those expenditures. Any reimbursements to political funds made pursuant to this order and agreed resolution shall be made from the respondent’s personal funds and shall be reported on Schedule G (used for reporting political expenditures from personal funds) of the respondent’s campaign finance report covering the period during which the reimbursements were made and indicate that no reimbursement from political funds is intended.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution and meets the conditions set forth in Section VII, this order and agreed resolution is a final and complete resolution of SC-280289.

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

Mario Ramirez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director