

TEXAS ETHICS COMMISSION

IN THE MATTER OF

**WALLACE KENNETH LAW,
RESPONDENT**

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BEFORE THE

**TEXAS ETHICS COMMISSION
SC-2809321**

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2809321. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.031, 253.032, 253.035(h), 254.0611, 254.0911, and 254.094 of the Election Code, and sections 20.29 and 20.63 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 accepted campaign contributions and made campaign expenditures without first filing a campaign treasurer appointment and a judicial declaration of intent regarding expenditure limits, failed to properly disclose, and improperly reimbursed, political expenditures made from personal funds, accepted a political contribution that exceeded the judicial contribution limit, accepted a political contribution from an out-of-state political committee without first receiving the required documentation from the committee and failed to include such documentation with the July 2008 semiannual report, and failed to include the required occupation, job title, and employer information for political contributors.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful incumbent candidate for chief justice of the Third Court of Appeals in 2008.
2. The allegations are based on the respondent's January 2008 and July 2008 semiannual reports.

3. The respondent's original January 2008 semiannual report, which was later corrected, covered the period from July 1, 2007, through December 31, 2007. The report disclosed the following:
 - \$200 in total political contributions of \$50 or less (corrected to \$440)
 - \$24,450 in total political contributions (corrected to \$34,190)
 - \$0 in total political expenditures of \$50 or less (corrected to \$394.01)
 - \$17,341.71 in total political expenditures (corrected to \$24,427.33)
 - \$7,108.29 in total political contributions maintained as of the last day of the reporting period (corrected to \$10,667.24)
 - \$0 in outstanding loans
4. The respondent's original July 2008 semiannual report covered the period from January 1, 2008, through June 30, 2008. (The report was later corrected to cover the period from January 22, 2008 through June 30, 2008.) The report disclosed the following:
 - \$480 in total political contributions of \$50 or less (corrected to \$405)
 - \$81,571.98 in total political contributions (corrected to \$43,971.98)
 - \$0 in total political expenditures of \$50 or less (corrected to \$204)
 - \$23,262.06 in total political expenditures (corrected to \$22,825.04)
 - \$55,592 in total political contributions maintained as of the last day of the reporting period (corrected to \$55,592.42)
 - \$0 in outstanding loans
5. In the correction affidavit for each correction, the respondent swore that he filed the corrected report not later than the 14th business day after the date he learned that the report as originally filed was inaccurate or incomplete and that any error or omission in the report as originally filed was made in good faith.

Report Following Appointment of Campaign Treasurer

6. The respondent, as an officeholder who did not have a campaign treasurer appointment on file, was required to file a report within 15 days of filing a campaign treasurer appointment on January 22, 2008. The "15-day after campaign treasurer appointment" report was due no later than February 6, 2008, and covered the period from January 1, 2008, through January 21, 2008. The respondent filed the report on October 7, 2008, while in the process of filing corrections in response to the complaint. The report disclosed the following:
 - \$125 in total political contributions of \$50 or less
 - \$34,225 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$3,211.52 in total political expenditures

- \$20,529.36 in total political contributions maintained as of the last day of the reporting period
- \$0 in outstanding loans

Campaign Treasurer Appointment

7. The complaint alleged that the respondent accepted approximately \$66,850 in campaign contributions during the last six months of 2007 and the first three weeks of 2008, at a time when the respondent did not have a campaign treasurer appointment in effect.
8. On January 2, 2002, the respondent filed a campaign treasurer appointment for the office of chief justice of the Third Court of Appeals.
9. On July 12, 2002, the respondent filed a final report and a designation of final report effectively terminating his campaign treasurer appointment.
10. On July 26, 2002, the commission acknowledged the final report by sending a letter to the respondent explaining that his final report terminated his campaign treasurer appointment and that he could not accept a campaign contribution or make a campaign expenditure without a campaign treasurer appointment in effect.
11. The respondent became the chief justice of the Third Court of Appeals on January 1, 2003, and filed semiannual reports as an officeholder through January 15, 2008.
12. On September 5, 2007, the respondent held a fundraiser for his re-election campaign. The announcement includes the e-mail address of kenlaw2008@austin.rr.com. The respondent's January 2008 semiannual report discloses that the respondent accepted five political contributions totaling \$2,350 before the date of the fundraiser.
13. On January 22, 2008, the respondent filed a new campaign treasurer appointment to seek re-election to the office in 2008.
14. In response to the allegation, the respondent swore:

I acknowledge that I did not formally designate a campaign treasurer before accepting some campaign contributions. I failed to recall that my prior campaign treasurer designation had been terminated and, consequently, I mistakenly believed my prior campaign treasurer designation remained in effect. As soon as this error was pointed out to me, I contacted the Commission and filed a campaign treasurer designation, approximately nine months ago [on January 22, 2008]. Additionally, I listed my campaign treasurer, [an individual], on the face of all contribution and expenditure reports, so the public was always informed of the name and address of the person who I intended to serve as my campaign treasurer.

15. The respondent disclosed \$24,450 in total political contributions on the original January 2008 semiannual report. The respondent corrected the January 2008 semiannual report to disclose an additional \$9,740 in total political contributions for the period from July 1, 2007, through December 31, 2007.
16. The respondent filed the “15-day after campaign treasurer appointment” report on October 7, 2008, and disclosed \$34,225 in total political contributions for the period from January 1, 2008, through January 21, 2008.

Declaration of Intent Regarding Judicial Expenditure Limits

17. The complaint alleged that the respondent accepted approximately \$66,850 in campaign contributions during the last six months of 2007 and the first three weeks of 2008, at a time when the respondent did not have on file with the commission either a sworn declaration of intent to comply with the limits on expenditures prescribed by the Judicial Campaign Fairness Act or a written declaration of intent to make expenditures exceeding those limits.
18. On January 2, 2002, the respondent filed a declaration of intent and swore that he would voluntarily comply with the limits on expenditures prescribed by the Judicial Campaign Fairness Act. The respondent filed the declaration of intent at the same time as he filed his campaign treasurer appointment to seek the office of chief justice of the Third Court of Appeals. On July 12, 2002, the respondent filed a final report and a designation of final report effectively terminating his campaign treasurer appointment. On January 22, 2008, the respondent filed a new campaign treasurer appointment to seek re-election to the office in 2008 and filed another declaration of intent, once again swearing that he would voluntarily comply with the expenditure limits.

In response to the allegation, the respondent swore:

I acknowledge that I did not timely file my declaration of my intent to comply with the voluntary statutory expenditure limits for judicial candidates prior to accepting contributions and making campaign expenditures. I, however, always have complied with the voluntary limits and it was always my intent to comply with the voluntary limits in this campaign. My failure to file the declaration was an oversight. I filed the declaration of intent to comply with the voluntary limits approximately nine months ago [on January 22, 2008], when I realized my oversight.

Improper Reimbursement of Political Expenditures from Personal Funds

19. The complaint alleged that the respondent reimbursed himself from political funds for approximately \$21,580 of political expenditures made from personal funds, but did not designate that he intended to seek reimbursement at the time the expenditures were disclosed in the July 2008 semiannual report.
20. The allegations are based on political expenditures that were disclosed on Schedule G (used to disclose political expenditures from personal funds) and that did not indicate that reimbursement was intended. The respondent denies that he reimbursed himself improperly. He swore that the political expenditures at issue were originally disclosed on the incorrect schedule. He corrected the July 2008 semiannual report and moved all but \$436.11 of the expenditures at issue to Schedule F (used to disclose political expenditures from political contributions) indicating that personal funds were not originally used.
21. There is evidence that the respondent reimbursed himself for a \$21.66 expenditure disclosed on his January 2008 semiannual report for which he did not indicate that reimbursement was intended.

Unlawfully Accepting Political Contributions in Excess of Contribution Limits

22. The complaint alleged that the respondent accepted \$10,000 in political contributions from an individual. The respondent's July 2008 semiannual report disclosed that he accepted two \$5,000 political contributions from the same individual on January 11, 2008.
23. In response to the allegation, the respondent swore:

I received a single contribution from [an individual], in the amount of \$5000. This single contribution was accidentally reported twice, possibly because two different volunteers have helped my campaign input contribution and expenditure information. This duplication has been corrected on the reports filed by me on October 7, 2008.

24. On October 7, 2008, the respondent corrected the July 2008 semiannual report to change the reporting period covered start date from January 1, 2008, to January 22, 2008, and deleted both contributions that were outside of the reporting period for the corrected report. Also on October 7, 2008, the respondent filed a "15-day after campaign treasurer appointment" report, covering the reporting period from January 1, 2008, through January 21, 2008, and disclosed one \$5,000 contribution from the individual on January 11, 2008.

Out-of-State Political Committee Contributions

25. The complaint alleged that the respondent failed to include information in a campaign finance report regarding an out-of-state political committee from which the respondent accepted political contributions totaling more than \$500 in a reporting period. The following contribution at issue was disclosed in the respondent's July 2008 semiannual report:

- \$1,000 on February 6, 2008, from KOCHPAC in Washington, DC

26. The report did not include the identification number that the Federal Election Commission (FEC) has assigned to the political committee or any additional information regarding the committee.

27. In response to the allegation, the respondent swore:

I acknowledge that I received a contribution from an out-of-state political committee without first receiving the required documentation. Unfortunately, at the time the donation was accepted and reported, it was not apparent to me that it was an out-of-state political action committee. Upon learning that it was an out-of-state political action committee, I have obtained the documentation and listed the political committee's FEC ID # on my corrected report, pursuant to Commission Rule 20.29.

28. On October 7, 2008, the respondent corrected the report to include the FEC identification number for the committee.

Principal Occupation and Job Title and Name of Employer

29. The complaint alleged that the respondent failed to include the principal occupation, employer, or job title of 21 out of 65 contributors in his January 2008 semiannual report. That report failed to include the information as alleged for political contributions totaling approximately \$9,950.

30. The complaint alleged that the respondent failed to include complete information about the principal occupation, employer, or job title of 26 out of 68 contributors in his July 2008 semiannual report. That report failed to include the information as alleged for political contributions totaling approximately \$18,570.

31. In response to the allegations, the respondent swore:

I acknowledge that I did not list the occupation, job title, or employer information of some contributors. I believe the volunteers who have helped input contribution and expenditure information made a good faith effort to report all information, but sometimes found that the information was not

available. All required information has been provided in the reports filed on October 7, 2008.

32. On October 7, 2008, the respondent corrected his January and July 2008 semiannual reports to add the principal occupation and job title and employer information for all contributions from individuals. The respondent also corrected the contributions originally disclosed as being from a couple to disclose two separate contributions, with the amount split evenly between each individual, and disclosed the principal occupation, job title, and employer information for both individuals. The respondent deleted two of the 26 contributions at issue in the July 2008 semiannual report: the \$1,000 from Mr. Oswald and one \$5,000 contribution from the individual who the respondent swore was incorrectly disclosed twice. Also on October 7, 2008, the respondent filed the “15-day after campaign treasurer appointment” report, and disclosed five of the 26 contributions at issue during that reporting period rather than on the corrected July 2008 report.

IV. Findings and Conclusions of Law

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

Report Following Appointment of Campaign Treasurer

1. An officeholder who appoints a campaign treasurer shall file a report as provided by this section. The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder’s campaign treasurer is appointed. The report shall be filed not later than the 15th day after the date the officeholder’s campaign treasurer is appointed. ELEC. CODE § 254.094.
2. The respondent filed the required “15-day after campaign treasurer appointment” report after the reporting deadline, while in the process of filing corrections in response to the complaint allegations. Therefore, there is credible evidence of a violation of section 254.094 of the Election Code.

Campaign Treasurer Appointment

3. A candidate is a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. ELEC. CODE § 251.001(1). An example of affirmative action includes the soliciting or accepting of a campaign contribution or the making of a campaign expenditure. *Id.* § 251.001(1)(G).

4. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a). A campaign treasurer appointment continues in effect until terminated. *Id.* § 252.011(b). The designation of a report as a final report terminates a candidate's campaign treasurer appointment. *Id.* § 254.065(b). An officeholder may accept officeholder contributions without a campaign treasurer appointment in effect. *Id.* § 253.031.
5. The respondent filed a final report on July 12, 2002, effectively terminating his campaign treasurer appointment and did not file a new campaign treasurer appointment until January 22, 2008.
6. The respondent filed a January 2008 semiannual report to disclose political contributions for the reporting period from July 1, 2007, through December 31, 2007.
7. On October 7, 2008, after the sworn complaint was filed, the respondent filed a "15-day after campaign treasurer appointment" report to disclose political contributions for the reporting period from January 1, 2008, through January 21, 2008.
8. The respondent acknowledges that he did not have a campaign treasurer appointment in effect during the period at issue and that he accepted political contributions during that time.
9. The respondent was a candidate for public office no later than September 5, 2007 (the date of the fundraiser). The respondent accepted five political contributions totaling \$2,350 before that date. Even if those were considered officeholder contributions, the evidence shows that the respondent accepted \$64,500 in campaign contributions before he filed a campaign treasurer appointment for the 2008 election. Therefore, there is credible evidence that the respondent violated section 253.031(a) of the Election Code.

Declaration of Intent Regarding Judicial Expenditure Limits

10. When a person becomes a candidate for a judicial office, the person shall file with the authority with whom the candidate's campaign treasurer appointment is required to be filed a sworn declaration of compliance stating that the person voluntarily agrees to comply with the limits on expenditures prescribed by this subchapter, or a written declaration of the person's intent to make expenditures that exceed the limits prescribed by this subchapter. ELEC. CODE § 253.164(a).
11. A judicial candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure before the candidate files a declaration under Subsection (a). *Id.* § 253.164(c).

12. The respondent filed a declaration of intent on January 2, 2002, and swore that he would voluntarily comply with the limits on expenditures prescribed by chapter 253, subchapter F of the Election Code (Judicial Campaign Fairness Act). The Judicial Campaign Fairness Act does not contemplate the termination or expiration of a declaration of intent that has been properly executed and filed with the appropriate filing authority, and the statutes do not provide that filing a final campaign finance report terminates a declaration of intent. Thus, the declaration of intent filed on January 2, 2002, remained in effect until the respondent filed another declaration of intent on January 22, 2008. Therefore, there is credible evidence that the respondent did not violate section 253.164 of the Election Code.

Improper Reimbursement of Political Expenditures from Personal Funds

13. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
14. The respondent swore that the approximately \$21,580 expenditures at issue were originally disclosed incorrectly in the July 2008 semiannual report as expenditures from personal funds. There is credible evidence of a violation of section 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules with respect to the \$21.66 political expenditure disclosed on the respondent's January 2008 semiannual report. There is insufficient evidence that the respondent violated those sections with respect to the remaining amount at issue.

Unlawfully Accepting Political Contributions in Excess of Contribution Limits

15. A judicial candidate or officeholder may not knowingly accept political contributions from a person that in the aggregate exceed the prescribed limits in connection with each election in which the person is involved. ELEC. CODE § 253.155(a). The contribution limits for a statewide judicial office is \$5,000. *Id.* § 253.155(b).
16. The respondent swore that he received a single \$5,000 contribution from an individual and that the single contribution was accidentally reported twice on his July 2008 semiannual report. There is no evidence to dispute this statement. The evidence indicates that two \$5,000 contributions from the same individual were disclosed on the report and all of the information disclosed for both contributions appears to be identical. Without additional information, there is insufficient evidence that the respondent accepted over \$5,000 in

political contributions from that individual. Therefore, there is insufficient evidence that the respondent violated section 253.155 of the Election Code.

Out-of-State Political Committee Contributions

17. In a reporting period, a candidate may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate receives from the out-of-state committee a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(a).
18. A candidate shall include the statement or copy required by Subsection (a) as a part of the report filed under chapter 254 of the Election Code that covers the reporting period to which Subsection (a) applies. *Id.* § 253.032(d).
19. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. Ethics Commission Rules § 20.29(a).
20. "Out-of-state political committee" means a political committee that makes political expenditures outside this state and in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).
21. The respondent accepted a political contribution of more than \$500 from the out-of-state political committee during the period covered by his July 2008 semiannual report. The respondent did not receive the required documentation from the political committee before he accepted the contribution and did not include the committee's statement of organization or FEC ID number on his July 2008 semiannual report. Therefore, there is credible evidence that the respondent violated section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules.

Principal Occupation and Job Title and Name of Employer

22. Each report by a candidate for a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any, or if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any. ELEC. CODE § 254.0611.
23. In addition to the contents required by sections 254.031 and 254.091 of the Election Code, each report by a holder of or a candidate for a judicial office covered by Subchapter F, Chapter 253, must include the contents prescribed by section 254.0611 of the Election Code. *Id.* § 254.0911.
24. The respondent corrected 21 political contributions on the January 2008 semiannual report, and 26 political contributions on the July 2008 semiannual report, that did not originally disclose the principal occupation, job title, or employer of the contributors. Therefore, there is credible evidence that the respondent violated sections 254.0611 and 254.0911 of the Election Code in connection with the 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 an officeholder who appoints a campaign treasurer shall file a campaign finance report not later than the 15th day after the date the officeholder's campaign treasurer is appointed. The respondent acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

The respondent acknowledges that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates,

purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

The respondent acknowledges that in a reporting period, a candidate may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate receives from the out-of-state committee a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution, or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee, and that a person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. The respondent acknowledges that the required statement or copy be included as a part of the report filed under chapter 254 of the Election Code that covers the applicable reporting period.

The respondent acknowledges that each report by a candidate for or holder of a judicial office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period, the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any, or if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any.

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 \$4,100 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-2809321.

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

Wallace Kenneth Law, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director