

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BARBARA H. NELLERMOE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31109204

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 18, 2012, to consider sworn complaint SC-31109204. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.1611, 254.031, and 254.0611 of the Election Code and section 20.62 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose on multiple campaign finance reports political contributions and political expenditures; 2) accepted political contributions from corporations or labor organizations; 3) made unlawful political contributions to political committees; and 4) did not properly report an asset valued at \$500 or more.

III. Facts Supported by Credible Evidence

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

1. The respondent has served as the judge for the 45th Judicial District since she was elected on November 5, 2002.

Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on four campaign finance reports. The allegations are as follows:

- January 2010 Semiannual Report - disclosed \$83,102.01; alleged \$85,182.34
 - July 2010 Semiannual Report - disclosed \$78,767.04; alleged \$81,388.73
 - January 2011 Semiannual Report - disclosed \$74,125.71; alleged \$77,611.59
 - July 2011 Semiannual Report - disclosed \$72,368; alleged \$78,371.12
3. In response to the complaint, the respondent swore that she uses a calculation method that takes the bank balance, subtracts outstanding payments that have been made but have not yet cleared the bank, and adds funds on hand that are not deposited but are received during the reporting period. The respondent swore that all amounts were reported correctly.

Disclosure of Full Names of Persons Making Political Contributions

4. The complaint alleged that the respondent did not properly disclose the full names of two contributors. The political contributions were disclosed on Schedule A (used to disclose political contributions) of the respondent's January 2010 and January 2011 semiannual reports. The partial name of a law firm was disclosed for one contributor. The other contributor's name was disclosed as an acronym that is on file in commission records as the name of a political committee.

Contributor Employer and Law Firm

5. The complaint alleged that the respondent failed to disclose the full name of the employer or law firm of 93 contributors. For the 93 contributions at issue, the respondent listed "self" in the sections used to identify the contributors' employer/law firm. In response to the complaint, the respondent swore that in determining the status of contributors as to employer, job title, and occupation, either the contributors responded that they were self employed, or this information was developed by reviewing the San Antonio Bar Association information.
6. For two of the contributions at issue, the evidence indicated that the contributors were attorneys employed by a law firm, not by themselves, at the time the contributions were made. The law firms were not identified in the respondent's report, and the law firms did not bear the contributors' names. For 75 of the contributions at issue, the evidence indicated that the contributors were solo practitioners at the time the contributions were made. For eight of the contributions at issue, the evidence indicated that the contributors were solo practitioners associated with a partnership, limited liability partnership, or professional corporation organized for the practice of law at the time the contributions were made. The contributors were identified as self-employed attorneys, but the evidence indicated that the contributors' names were included in the names of each respective entity. For the remaining eight contributors, the evidence was inconclusive as to the contributors' employers.

Disclosure of Full Names of Persons Receiving Political Expenditures

7. The complaint alleged that the respondent did not properly disclose in four semiannual campaign finance reports the full name of eight payees of political expenditures. The respondent disclosed each payee name as an acronym. Each payee commonly uses the acronym disclosed by the respondent as its name.

Disclosure of Purposes of Political Expenditures

8. The complaint alleged that the respondent did not properly disclose in three semiannual campaign finance reports the purpose of 17 political expenditures. However, the aggregate amounts for nine of the political expenditures at issue were less than \$50 to a single payee during the reporting period. Therefore, the respondent was not required to itemize those expenditures. The remaining eight political expenditures at issue were disclosed on Schedule F of the semiannual reports and included an expenditure category and a brief purpose description.

Actual Payees of Political Expenditures

9. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of a political expenditure in her July 2010 semiannual report. The political expenditure at issue disclosed an individual as the payee and the expenditure category as "Office Overhead/Rental Expense" with a description of "Courtroom/Office supplies."
10. In response to the complaint, the respondent swore that the expenditure was made to reimburse a staff member for personal expenditures he made to HEB and Wal-Mart for office supplies.

Political Contributions from Corporations or Labor Unions

11. The complaint alleged that, based on disclosures in the respondent's January 2010 and July 2010 semiannual reports, the respondent accepted six political contributions from corporations or labor unions. The contributions at issue did not come from prohibited corporations or labor unions.

Contributions to Political Committees for Primary Election

12. The complaint alleged that the respondent made unlawful political contributions to two political committees in connection with a March 2, 2010, Democratic Party primary election, in which the respondent was an unopposed incumbent candidate for district judge. The political contributions at issue were disclosed on Schedule F of the respondent's July 2010 semiannual report as follows:

- January 19, 2010, \$250 to the Northeast Bexar County Democrats (NBCD) under the category of “Contribution/Donations made by Candidate” with a description of “Decorations for Dinner Event”
 - January 23, 2010, \$250 to the Bexar County Democratic Party (BCDP) under the category of “Contribution/Donations made by Candidate” with a description of “Donation”
13. Regarding the \$250 contribution to NBCD, the respondent swore that the contribution did not exceed the \$500 limit to a political committee. The \$250 political expenditure made by the respondent was reported as a political contribution on NBCD’s 30-day pre-election report for the March 2010 primary election and is consistent with the information disclosed by the respondent.
14. Regarding the \$250 contribution to BCDP, the respondent swore that the contribution did not exceed her pro rata share of the central executive committee’s normal overhead and administrative or operating costs. The \$250 political expenditure made by the respondent was reported as a \$500 contribution on BCDP’s 8-day pre-election report for the March 2010 primary election. During a telephone conversation with commission staff, the respondent claimed that she actually made a \$500 political expenditure and inadvertently disclosed \$250, which was the amount on the bank deposit slip. The respondent subsequently corrected the July 2010 semiannual report to show the \$500 political expenditure.
15. Upon request from commission staff, the respondent provided another statement explaining how her pro rata share was determined. The respondent claimed that in 2011, the former treasurer of the BCDP was convicted of theft for embezzling approximately \$200,000, and that the theft caused the BCDP to default on many expenses, including office rent. The respondent further stated that no calculation of the approximate pro rata share was developed or provided by the interim chair of the BCDP, but she was a candidate in the 2010 primary election and did receive services from the BCDP during that time. There were approximately 139 candidates in the primary election held after the contribution at issue, approximately 102 of which were candidates for a state or county office.

Contributions to Political Committees When Not on Ballot

16. The complaint alleged that the respondent used political contributions to knowingly make political contributions to four political committees in excess of \$250 during a calendar year in which the respondent’s office held was not on the ballot. The political contributions at issue were disclosed on Schedule F of the respondent’s July 2009 and January 2010 semiannual reports as follows:

League of Latin American Citizens (LULAC)

- August 28, 2009, \$200 to LULAC for the purpose of “Event tickets to the Jaime Martinez Hall of Famers”
- October 7, 2009, \$75 to LULAC Rey Feo Scholarship Fund for the purpose of “Program Advertisement”
- October 27, 2009, \$200 to LULAC for the purpose of “Lulac Table Sponsor for fund-raising event”

17. Commission records do not show that LULAC is a political committee.

Northeast Bexar County Democrats (NBCD)

- March 24, 2009, \$200 to Northeast Bexar County Democrats for the purpose of “tickets for function” (disclosed as political contribution in committee’s report)
- April 28, 2009, \$15 to Northeast Bexar County Democrats for the purpose of “Annual Dues” (disclosed as political contribution in committee’s report)
- August 28, 2009, \$50 to Northeast Bexar County Democrats for the purpose of “Campaign table at picnic” (not itemized in committee’s report)
- October 3, 2009, \$5 to Northeast Bexar County Democrats for the purpose of “Meeting expense” (not itemized in committee’s report)
- November 7, 2009, \$5 to Northeast Bexar County Democrats for the purpose of “Meeting expense” (not itemized in committee’s report)

Northwest Democrats of Bexar County PAC (NDBC)

- January 5, 2009, \$250 to Northwest Democrats for the purpose of “Tickets to event” (disclosed as political contribution in committee’s report)
- June 16, 2009, \$500 to Northwest Democrats for the purpose of “Tickets to event & advertising in Program Brochure” (disclosed as a political contribution in committee’s report)
- June 20, 2009, \$5 to Northwest Democrats for the purpose of “Breakfast meeting” (not itemized in committee’s report)
- August 19, 2009, \$50 to Northwest Democrats for the purpose of “Dinner ticket” (disclosed as a political contribution in committee’s report)

- December 8, 2009, \$250 to Northwest Democrats for the purpose of “Super Bowl Sponsor” (disclosed as political contribution in committee’s report)

Stonewall Democrats of San Antonio

- April 29, 2009, \$35 to Stonewall Democrats for the purpose of “Annual dues” (not itemized in committee’s report)
- August 28, 2009, \$250 to Stonewall Democrats for the purpose of “Table Sponsor at Banquet” (disclosed as political contribution in committee’s report)

18. In response to the complaint, the respondent swore that she was on the ballot, and therefore campaigning during the 2009-2010 election season. The respondent swore that the expenditures were for annual membership dues, goods or services rendered (such as advertising in a gala program), or sponsorships where tickets were purchased to an event where food was consumed, or for the member cost of attending monthly breakfast meetings.

Reporting an Asset of \$500 or More

19. The complaint alleged that the respondent did not properly report the purchase of an asset valued at \$500 or more. The political expenditure at issue was disclosed on Schedule F (used to disclose political expenditures) of the January 2011 semiannual report as follows:
- October 7, 2010, \$523.76 to Target, under the category of “Office Overhead/Rental Expense” with a description of “IPAD and carrying case”
20. The evidence indicated that there were two items purchased and the prices included sales taxes, and that neither item purchased exceeded the \$500 threshold for the filing of Schedule M (used to disclose the purchase of assets valued at \$500 or more).

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report must include as of the last day of the reporting period, 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). A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. ELEC. CODE § 254.031(a-1).

2. The respondent swore that the amounts of total political contributions maintained were properly disclosed. With respect to the respondent's January 2010 semiannual report, the difference between the amount originally disclosed and the amount alleged does not exceed the lesser of 10% of the amount originally disclosed or \$2,500 and, thus, is on its face *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to the January 2010 semiannual report.
3. Based on the evidence submitted, the respondent did not report the balance that was on deposit as of the last day of the reporting period for the July 2010, January 2011, and July 2011 semiannual reports. Accordingly, the respondent did not properly report total political contributions maintained. There is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those three reports.

Disclosure of Full Names of Persons Making Political Contributions

4. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
5. The name of an entity that is required to be included in the name of the committee may be a commonly recognized acronym by which the entity is known. ELEC. CODE § 252.003(d).
6. Regarding the contribution from the law firm, the respondent was required to list the full name of the entity since the contribution exceeded \$50. The respondent did not disclose the full legal name of the entity. However, the omission was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code with respect to that contribution.
7. Regarding the contribution from the committee, the respondent was required to list the full name of the entity since the contribution exceeded \$50. According to Ethics Commission records, the committee uses the acronym disclosed by the respondent to represent the name of the committee when filing campaign finance reports. An Internet search using the acronym returned a first-page result with the full name of the committee. Accordingly, someone viewing the report could have reasonably ascertained the full name of the contributor. Since the acronym is commonly used as the name of the entity, the disclosure substantially complies. There is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Contributor Employer and Law Firm

8. 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. ELEC. CODE § 254.0611(a)(2)(A). "Law firm" means a partnership, limited liability partnership, or professional corporation organized for the practice of law. *Id.* § 253.157(e).

9. Black's Law Dictionary defines "employer" as "a person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages." Black's Law Dictionary 565 (8th ed. 2004).
10. For two of the contributions at issue, the evidence indicated that the contributors were attorneys employed by a law firm, not by themselves, at the time the contributions were made. The law firms were not identified in the respondent's report, and the law firms did not bear the contributors' names. Therefore, there is credible evidence of violations of section 254.0611(a)(2)(A) of the Election Code with respect to those two contributions.
11. For 75 of the contributions at issue, the evidence indicated that the contributors were solo practitioners at the time the contributions were made. There is no evidence that the contributors are associated with a corporation, professional corporation, or limited liability company. Therefore, there is credible evidence of no violations of section 254.0611(a)(2)(A) of the Election Code with respect to those 75 contributions.
12. For eight of the contributions at issue, the evidence indicated that the contributors were solo practitioners associated with a partnership, limited liability partnership, or professional corporation organized for the practice of law at the time the contributions were made. The contributors were identified as self-employed attorneys, and the respondent did not list the formal name of the entity with which each contributor is employed. However, the commission has previously determined that there is no violation of section 254.0611(a)(2)(A) of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed. Credible evidence indicated that the contributors at issue are officers or principals of entities, and that the contributors' names were included in the names of each respective entity. Therefore, there is credible evidence of no violations of section 254.0611(a)(2)(A) of the Election Code with respect to those eight contributions.
13. For eight of the contributions at issue, the evidence was inconclusive as to the contributors' employers. Therefore, there is insufficient evidence of violations of section 254.0611(a)(2)(A) of the Election Code with respect to those eight contributions.

Disclosure of Full Names of Persons Receiving Political Expenditures

14. 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 political expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

15. The acronyms at issue are commonly used as the names of the payees at issue. Since the acronyms are commonly used as the names of the payees, the disclosures substantially comply. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Purposes of Political Expenditures

16. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
17. A candidate or officeholder is also required to include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. *Id.* § 254.031(a)(4).
18. 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.
19. There is credible evidence of no violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Actual Payees of Political Expenditures

20. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
21. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be

reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

22. The evidence indicated that the political expenditure at issue was made to reimburse a staff member for political expenditures made to HEB and Wal-Mart. Accordingly, the respondent was required to disclose HEB and Wal-Mart as the actual vendor payees, or include the amount in the total for political expenditures of \$50 or less. The respondent did not disclose the actual vendor payees to whom the expenditures were ultimately made or include the expenditures in the total for aggregate political expenditures of \$50 or less. Given the amount of the expenditure at issue, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Political Contributions from Corporations or Labor Unions

23. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
24. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
25. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
26. With respect to all six contributions at issue, there is credible evidence of no violations of sections 253.003 and 253.094 of the Election Code.

Contributions to Political Committees for Primary Election

27. A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to knowingly make political contributions to a political committee in connection with a primary election. ELEC. CODE § 253.1611(b).
28. Section 253.1611 of the Election Code does not apply to a political contribution made to the principal political committee of the state executive committee or a county executive committee of a political party that is (1) made in return for goods or services, including political advertising or a campaign communication, the value of which substantially equals or exceeds the amount of the contribution, or (2) in an amount that is not more

- than the candidate's or officeholder's pro rata share of the committee's normal overhead and administrative or operating costs. *Id.* § 253.1611(e)(1), (2).
29. For purposes of Subsection (e)(2), a candidate's or officeholder's pro rata share of a political committee's normal overhead and administrative or operating costs is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. *Id.* § 253.1611(f).
30. "In connection with an election" means, with regard to a contribution that is designated in writing for a particular election, the election designated or, with regard to a contribution that is not designated in writing for a particular election or that is designated as an officeholder contribution, the next election for that office occurring after the contribution is made. *Id.* § 253.152(2).
31. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3). "Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4). "Political committee" means a group of persons that has as a principal purpose accepting political contributions or making political expenditures. *Id.* § 251.001(12).
32. Regarding the contribution to NBCD, the Judicial Campaign Fairness Act prohibits a judicial candidate from using political contributions to knowingly make political contributions to a political committee in connection with a primary election. NBCD is a general-purpose political committee that files semiannually with the commission, thus the exception under section 253.1611(e) of the Election Code does not apply. NBCD disclosed as a political contribution the \$250 it received from the respondent. Under section 253.152(2) of the Election Code, if the respondent did not designate the contributions in writing for a particular election, the contributions would have been made in connection with "the next election for that office occurring after the contribution is made." There is no evidence that the respondent designated any of the contributions for a particular election. In addition, the next election for the office that the respondent was a candidate for was the March 2010 primary election. Therefore, there is credible evidence that the respondent violated section 253.1611(b) of the Election Code by using political contributions to make \$250 in political contributions to a political committee in connection with a primary election.

33. Regarding the contribution to the BCDP, commission records indicate that BCDP is a county executive committee that files semiannually with the commission. In order to claim the exception under section 253.1611(e)(2) of the Election Code, the political contribution must be no more than the officeholder's pro rata share of the committee's normal overhead and administrative or operating costs, which is computed by dividing the committee's estimated total expenses for a period by the number of candidates and officeholders to whom the committee reasonably expects to provide goods or services during that period. Although the statute is somewhat ambiguous, it can be reasonably read to require that in order to have a pro rata share, the committee must be providing a good or service to the candidate or officeholder.
34. In response to the complaint, the respondent stated that no calculation of the approximate pro rata share was developed or provided by the interim chair of the BCDP, but that she was a candidate in the 2010 primary election and received services during that time. Although the respondent may have received services from the BCDP in 2010, it is clear that the \$500 contribution was not based on her pro rata share of the committee's normal overhead and administrative or operating costs. In addition, there were approximately 139 Democratic candidates on the ballot, 102 of which were for a state or county public office who presumably received some even minimal services from the party. Therefore, the \$500 contribution from the respondent would have exceeded her pro rata share. There is credible evidence of a violation of section 253.1611(b) of the Election Code.

Contributions to Political Committees When Not on Ballot

35. A judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250. *Id.* § 253.1611(d).
36. District judges serve four-year terms. TEX. CONST. ART. V, § 7. Since the respondent was re-elected as district judge in November of 2006, she was not up for reelection until 2010. Therefore, the respondent's office of district judge was not on the ballot in 2009, the calendar year when the political contributions at issue were made. Thus, the respondent could not use political contributions to make political contributions to a political committee that exceeded \$250 in 2009.
37. The exception under section 253.1611(e)(2) of the Election Code does not apply to a political contribution made to a general-purpose political committee, as opposed to the principal political committee of a state executive committee or county executive committee of a political party.

League of Latin American Citizens (LULAC)

38. LULAC is not a political committee. Accordingly, the respondent did not make a political contribution to a political committee in excess of \$250 during a calendar year in

which the office held was not on the ballot. Therefore, there is credible evidence of no violation of section 253.1611(d) of the Election Code with respect to these contributions.

Northeast Bexar County Democrats (NBCD)

39. In calendar year 2009, the respondent used political contributions to pay an aggregate of \$275 to NBCD, a general-purpose political committee that files semiannually with the commission. Out of the \$275 in political expenditures, NBCD itemized \$215 as political contributions from the respondent. The remaining \$60 was not itemized in the committee's reports, thus it is unclear whether the committee treated the money as a political contribution. However, according to the descriptions of "campaign table at picnic" and "meeting expense," and the sworn statement provided by the respondent, the evidence indicated that the respondent was receiving goods or services in return for the three political expenditures totaling \$60. Accordingly, the respondent made political contributions of approximately \$215 to NBCD during 2009. There is credible evidence of no violation of section 253.1611(d) of the Election Code.

Northwest Democrats of Bexar County PAC (NDBC)

40. In calendar year 2009, the respondent used political contributions to pay an aggregate of \$1,055 to NDBC, a general-purpose political committee that files monthly with the commission. Out of the \$1,055 in political expenditures, NDBC itemized \$1,050 as political contributions from the respondent. Therefore, the respondent made political contributions to a political committee in excess of \$250 during a calendar year in which the office held was not on the ballot. There is credible evidence of a violation of section 253.1611(d) of the Election Code.

Stonewall Democrats of San Antonio

41. In calendar year 2009, the respondent used political contributions to pay an aggregate of \$285 to the Stonewall Democrats of San Antonio, a general-purpose political committee that files semiannually with the commission. Out of the \$285 in political expenditures, the committee itemized \$250 as political contributions from the respondent. The evidence is insufficient to show that the additional \$35 at issue was a political contribution. Therefore, there is insufficient evidence of a violation of section 253.1611(d) of the Election Code.

Reporting an Asset of \$500 or More

42. Each report by a candidate for judicial office must include a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period. ELEC. CODE § 254.0611(a)(3).
43. Although the aggregate value of the items purchased by the respondent may exceed \$500, the statute applies to the purchase of a single asset valued at \$500 or more. Accordingly, the respondent was not required to disclose the political expenditure on Schedule M

because she did not purchase an individual asset with a value of \$500 or more. Therefore, there is credible evidence of no violation of section 254.0611(a)(3) 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) a judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not use a political contribution to knowingly make political contributions to a political committee in connection with a primary election; 2) a judicial officeholder may not, in any calendar year in which the office held is not on the ballot, use a political contribution to knowingly make a political contribution to a political committee that, when aggregated with each other political contribution to a political committee in that calendar year, exceeds \$250; 3) each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 4) political expenditures made out of personal funds by a staff member of a candidate or officeholder with the intent to seek reimbursement from the candidate or officeholder must be reported in accordance with section 20.62 of the Ethics Commission Rules; 5) each campaign finance report must include as of the last day of the reporting period, 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; and 6) 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. 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 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 \$250 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-31109204.

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

Barbara H. Nellermeoe, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director