

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RENEE MCELHANEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3111256

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on March 27, 2013, to consider sworn complaint SC-3111256. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031, 254.061, 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 political contributions and political expenditures, 2) accepted political contributions from corporations or labor organizations, and 3) made political contributions to a political committee exceeding \$500 in connection with a general election.

III. Facts Supported by Credible Evidence

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

1. At the time relevant to the complaint, the respondent was judge of the 73rd District Court in San Antonio, Texas.

Total Political Contributions Maintained

2. The complaint alleged that the respondent did not properly disclose total political contributions maintained on six campaign finance reports. In response to the complaint, the respondent submitted her campaign account statements covering the period at issue in the complaint. On five reports at issue, the amount of total political contributions maintained originally disclosed was the same amount reported on the respondent's campaign account statements. On the respondent's July 2011 semiannual report, the

difference between the amount originally disclosed and the bank statement amount was \$53,200.

3. In response to the complaint, the respondent swore that she included those contributions on hand but not yet deposited in the amount of total political contributions maintained on the July 2011 semiannual report. The respondent's campaign account statement shows that \$53,200 posted to the campaign account on July 1 and July 5, 2011, after the end of the reporting period. The respondent filed a corrected July 2011 semiannual report and disclosed the correct amount of total political contributions maintained.

Political Contributions from Corporations or Labor Unions

4. The complaint alleged that, based on disclosures in six campaign finance reports, the respondent accepted 13 political contributions from corporations or labor unions. The contributions at issue did not come from corporations or labor unions.

Disclosure of Full Names of Persons Making Political Contributions

5. The complaint alleged that, based on disclosures in three campaign finance reports, the respondent did not disclose the full name for five political contributions. With respect to one disclosure for \$251, the respondent did not disclose the full name of the contributor.

Contributor Employer or Law Firm

6. The complaint alleged that, based on disclosures in the five campaign finance reports, the respondent did not disclose the principal occupations or job titles and names of employers or law firms for 26 contributors. On the reports at issue, with respect to five contributions, totaling \$1,800, the respondent listed the contributors as "self-employed." However, evidence shows that the contributors were employed by separate entities. With respect to two pledges totaling \$3,500, the respondent did not disclose the job title of the contributors. With respect to a contribution totaling \$251, the respondent disclosed an incorrect employer, occupation, and job title. With respect to four contributions, the evidence was inconclusive as to the contributor's employer, occupation, and job title information. With respect to 14 contributions, the contributors were officers or principals of entities that bore their name, or were otherwise self-employed.

Notice from Political Committees

7. The complaint alleged that the respondent did not disclose on the 8-day pre-election report for the November 2010 election, and January and July 2011 semiannual reports, information regarding political committees that supported the respondent. The complaint alleged that the respondent was required to disclose on the cover sheet of each report, the name and address of a specific-purpose committee that supported the respondent and two other officeholders. The reports show that the respondent accepted political contributions from the committee during the reporting periods for the 8-day pre-election report and

January 2011 semiannual report. The respondent did not disclose any contributions received from the committee during the July 2011 semiannual reporting period.

Disclosure of Political Expenditures as Reimbursements

8. The complaint alleged that the respondent improperly reported 24 political expenditures as reimbursements on three campaign finance reports. In response to the complaint, the respondent filed corrected reports to disclose the actual vendor payee of 21 political expenditures, totaling approximately \$1,620. The respondent did not correct two political expenditures, totaling \$640. One of those expenditures is described as a “reimbursement” on the report, and the other expenditure is described by the respondent in her response as a reimbursement. The remaining expenditure was properly disclosed.

Disclosure of Total Political Expenditures and Payee Address

9. The complaint alleged that the respondent disclosed an incorrect amount of total political expenditures on her January 2011 semiannual report. The respondent’s original January 2011 semiannual report disclosed \$164,821.96 in total political expenditures. The complaint alleged that the amount of total political expenditures should have been disclosed as \$18,215.36. The original report included expenditures previously disclosed on the respondent’s 30-day and 8-day pre-election reports for the November 2010 election. In response to the complaint, the respondent filed a corrected report and acknowledged that the original amount of total political expenditures was incorrect, but not as alleged. The respondent disclosed the correct amount of total political expenditures as \$18,424.86.
10. The complaint also alleged that the respondent did not disclose the complete address for the payee of three political expenditures on the 30-day pre-election report for the November 2010 election. The street name, city, state, and zip code are disclosed, but the respondent did not include the street number. The expenditures are on the same date and each one discloses the same amount and purpose, but it is unclear whether they are duplicate entries. The total amount of the expenditures did not exceed \$50.

Contributions to Political Committee in Connection with General Election

11. The complaint alleged that, based on disclosures in the respondent’s 8-day pre-election report for the November 2010 election, the respondent made political contributions to a political committee exceeding \$500 in connection with a general election.
12. The respondent disclosed two in-kind contributions from the Republican Party of Bexar County (“the party”), a county executive committee, on her 8-day pre-election report. On September 28, 2010, the respondent disclosed a \$446.74 in-kind contribution from the party for “postage and printing of mailing.” On October 14, 2010, the respondent disclosed a \$1,701.26 in-kind contribution from the party for “slate card printing and mailing.”

13. The complaint allegations are based on expenditures disclosed on the same report with the party as the payee. On October 11, 2010, the respondent disclosed a \$446.74 contribution to the party and on October 18, 2010, the respondent disclosed a \$1,600 expenditure to the party. Both expenditures had the stated purpose of "Donation to the Republican Party of Bexar County." On October 12, 2010, the party disclosed two contributions from the respondent for \$446.74 and \$1,600 on its 8-day pre-election report for the November 2010 election.
14. In response to the complaint, the respondent filed a corrected report and clarified the purpose of each expenditure. The respondent corrected the purpose of the \$446.74 expenditure to "Donation for mailing of campaign materials to those seeking mail-in ballots." The purpose of the \$1,600 expenditure was corrected to "Donation to Republican Party of Bexar County for printing/ mailing of candidate brochures." With respect to the \$446.74 expenditure, the respondent provided a copy of a billing invoice that she stated she received from the party indicating that the total cost of the expenditure for the mailing was \$1,786. The amount was divided among four judicial candidates, including the respondent. The invoice indicated that the respondent's share of the expenditure was \$446.74. With respect to the \$1,600 expenditure, the respondent provided a copy of email correspondence between herself and the treasurer of the party indicating that the total cost for the mailing at issue was \$1,701.26, and would constitute an in-kind contribution in that amount from the party. In the email correspondence, the respondent indicated that if she paid \$1,600, then the in-kind contribution from the party would total \$101.26.

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).
2. With respect to the respondent's January and July 2010 semiannual reports, 30-day and 8-day pre-election reports for the November 2010 election, and January 2011 semiannual report, the amount of total political contributions maintained originally disclosed was the same amount reported on the respondent's campaign account statements. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to those reports.
3. With respect to the respondent's July 2011 semiannual report, the difference between the amount originally disclosed and the bank statement amount is \$53,200. In response to the complaint, the respondent swore that she included contributions on hand but not yet deposited in the amount of total political contributions maintained on her report. The respondent's campaign account statement shows that \$53,200 posted to the campaign

account on July 1 and July 5, 2011, after the end of the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code with respect to that report.

Political Contributions from Corporations or Labor Unions

4. 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.
5. 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.
6. 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.
7. The contributors at issue were not corporations, labor unions, or other prohibited contributors. There is credible evidence of no violation of sections 253.003 and 254.094 of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions

8. 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).
9. With respect to one contribution totaling \$251, the respondent did not disclose the full name of the contributor. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code with respect to that contribution. The remaining entries were properly disclosed. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Disclosure of Contributor Employer or Law Firm

10. 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).
11. The contributions at issue in the aggregate exceeded \$50. Therefore, the respondent was required to disclose the principal occupation, job title, and employer or law firm

information of each contributor. With respect to five contributions, totaling \$1,800, the respondent listed the contributors as “self-employed.” However, evidence shows that the contributors were employed by separate entities. With respect to two pledges totaling \$3,500, the respondent did not disclose the job title of the contributors. With respect to a contribution totaling \$251, the respondent disclosed an incorrect employer, occupation, and job title. There is credible evidence of violations of section 254.0611(a)(2)(A) of the Election Code with respect to those contributions. With respect to four contributions, totaling \$6,075, the evidence was inconclusive as to the contributor’s employer, occupation, and job title information. Therefore, there is insufficient evidence of violations of section 254.0611(a)(2)(A) of the Election Code with respect to those contributions. With respect to 14 contributions, the contributors were officers or principals of entities that bore their name, or were otherwise self-employed. The entries did not substantially affect disclosure. Therefore, there is credible evidence of no violation of section 254.0611(a)(2)(A) of the Election Code with respect to those contributions.

Notice from Political Committees

12. If a specific-purpose committee accepts political contributions or makes political expenditures for a candidate or officeholder, the committee’s campaign treasurer shall deliver written notice of that fact to the affected candidate or officeholder not later than the end of the period covered by the report in which the reportable activity occurs. ELEC. CODE § 254.128(a).
13. Each campaign finance report by a candidate must include for each political committee from which the candidate received notice under section 254.128 or 254.161 of the Election Code: the committee’s full name and address; an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and the full name and address of the committee’s campaign treasurer. ELEC. CODE § 254.061(3).
14. The respondent did not include the committee information on her reports. However, the respondent disclosed contributions from the committee during the period for the 8-day pre-election report and January 2011 semiannual report. Although receipt of the contributions may have met the notice requirement, the respondent disclosed the contributions on Schedule A. Therefore, with respect to the respondent’s 8-day pre-election report for the November 2010 election and January 2011 semiannual report, there is credible evidence of technical or *de minimis* violations of section 254.061(3) of the Election Code. With respect to the respondent’s July 2011 semiannual report, there is no evidence that the committee supported the respondent during the reporting period. Therefore, there is credible evidence of no violation of section 254.061(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

15. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
16. 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.
 17. The respondent filed corrected reports to disclose the actual vendor payee for 21 political expenditures totaling approximately \$1,620. However, at the time the reports were originally filed, the respondent did not properly disclose this information. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to those expenditures. With respect to the two political expenditures that the respondent did not correct, totaling \$640, the respondent's response and description of the expenditures at issue indicate that they were reimbursements for which the actual vendor payee was not disclosed. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to those expenditures. The remaining expenditure was properly disclosed. There is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with respect to that expenditure.

Disclosure of Total Political Expenditures and Payee Address

18. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
19. Each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).

20. The respondent did not properly disclose total political expenditures on the January 2011 semiannual report. The respondent filed a corrected report to disclose the correct amount of total political expenditures. However the amount was incorrect as originally disclosed. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code. The respondent did not disclose the complete street address for three political expenditures. The total amount of the expenditures did not exceed \$50. Thus, they fell below the itemization threshold. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to those expenditures.

Contributions to Political Committee in Connection with General Election

21. A judicial candidate or a specific-purpose committee for supporting or opposing a judicial candidate may not 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 connection with a general election, exceeds \$500. ELEC. CODE § 253.1611(c).
22. 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).
23. Based on the corrected purpose descriptions given and the evidence provided with the response to the complaint, it appears that the contributions at issue were made in connection with the November 2010 general election. However, the contributions were made to the county executive committee of the respondent's political party. The contributions at issue were originally disclosed as in-kind contributions from the Party and the respondent reimbursed the party for the expenditures. With respect to the \$446.74 contribution, the respondent provided a billing invoice indicating that she received goods and services in the form of political advertising in return for the contribution. The invoice indicated that the value of the goods and services were \$446.74, and the campaign finance reports of both the party and the respondent reflect that this was the case. There is credible evidence of no violation of section 253.1611 of the Election Code with respect to that contribution.
24. With respect to the \$1,600 contribution, the respondent received goods and services in the form of political advertising and the amount exceeded the \$1,600 at issue, her allocated share of that advertising. Therefore, there is credible evidence of no violation of section 253.1611(c) of the Election Code with respect to that contribution.

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) 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; 2) 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; 3) 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; 4) each campaign finance report by a candidate must include for each political committee from which the candidate received notice under section 254.128 or 254.161 of the Election Code: the committee's full name and address; an indication of whether the committee is a general-purpose committee or a specific-purpose committee; and the full name and address of the committee's campaign treasurer; 5) a campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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; 6) the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules; 7) each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and the sanction necessary to deter future violations, the commission imposes a \$500 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-3111256.

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

Renee McElhaney, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director