

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RODOLFO “RUDY” DELGADO,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31112277

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 30, 2013, to consider sworn complaint SC-31112277. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.031, 254.0611, and 254.063 of the Election Code and sections 20.61, 20.62, 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: 1) did not timely file a semiannual campaign finance report, 2) did not include on two reports a specific listing of each asset valued at \$500 or more that was purchased with political contributions and was on hand as of the last day of the reporting period; 3) converted political contributions to personal use; 4) did not disclose on multiple reports the actual vendor payee information of political expenditures; and 5) did not properly describe on multiple reports the purposes of political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent, the 93rd Judicial District Judge, had a campaign treasurer in effect during the time at issue.
2. The reports at issue in the complaint are the January and July 2010 and January and July 2011 semiannual reports.

Timely Filing of Report

3. The complaint alleged that the respondent did not timely file his January 2010 semiannual report. The report was due on January 15, 2010. The respondent filed the report on January 30, 2010. The respondent submitted an affidavit that stated facts that led the commission to waive the late filing penalty.

Disclosure of Assets

4. The complaint alleged that the respondent did not properly disclose on the January and July 2010 semiannual reports assets purchased with political contributions valued at \$500 or more.
5. The respondent corrected the reports at issue to disclose assets on Schedule M, which is used to disclose assets valued at \$500 or more purchased with political contributions.

Conversion of Political Contributions to Personal Use

6. The complaint alleged that the respondent converted political contributions to personal use by paying \$105 to Sam's Wholesale Club on April 15, 2010, for "Annual Membership Dues" as disclosed on the July 2010 semiannual report.
7. The response stated that the membership is used to purchase items for campaign and officeholder purposes, and that no campaign funds are used to purchase items for personal use.
8. The respondent's July 2010 semiannual report did not disclose any other expenditures to Sam's Wholesale Club. The respondent's January 2011 and July 2011 semiannual reports did not disclose any expenditures to Sam's Wholesale Club.

Vendor Payee Information, Reimbursement of Political Expenditures, and Reporting Total Political Expenditures of \$50 and Less

9. The complaint alleged that the respondent did not disclose the actual vendor payee, address, date, and amount pertaining to the stated purpose of political expenditures disclosed on the January 2010, January 2011, and July 2011 semiannual reports.
10. The respondent disclosed withdrawing \$5,000 from the bank to pay for Christmas baskets. The evidence indicated that the respondent did not disclose the actual vendor payee information of the two persons that the respondent paid \$2,500 each for the Christmas baskets. The respondent corrected the error.

11. The respondent disclosed making a \$157.68 reimbursement to an individual. The evidence indicated that there was one expenditure, for \$84.09, for which the respondent was required to disclose the actual vendor payee information and did not. The respondent corrected the error.
12. The respondent disclosed making a \$400 reimbursement to an individual. The evidence indicated that there were two expenditures, one for \$156.92 and one for \$215.75, for which the respondent was required to disclose the actual vendor payee information and did not. The respondent corrected the error.
13. The respondent disclosed making three reimbursements that all exceeded \$50, totaling approximately \$340 to staff members. The evidence indicated that the respondent did not properly disclose the actual vendor, address, date, and amount of the expenditures. The respondent corrected the error.
14. The respondent paid himself \$1,000 to reimburse himself for political expenditures he previously made from his personal funds to pay campaign workers. The evidence indicated that the expenditures were \$50 or less.
15. The respondent disclosed making a \$75 reimbursement to an individual for the purpose of: "Printing Expense." The respondent corrected the purpose of the expenditure to: "Purpose: Category – OTHER – gas; Description – Reimbursement: gasoline for driving officeholder to various political events."
16. The respondent disclosed making an expenditure of approximately \$110 for "Cell phone Accessories" and an \$800 expenditure for "Catering; Campaign R-Election Beef BBQ." The evidence indicated that the respondent properly disclosed the actual vendor, address, date, and amount of the expenditures.

Descriptions of the Purposes of Political Expenditures

17. The complaint alleged that the respondent did not properly describe the purposes of political expenditures made to payees disclosed on the January and July 2010 and the January and July 2011 semiannual reports.
18. The descriptions of the purposes of the 22 expenditures disclosed on the January and July 2010 semiannual reports were adequate.
19. The descriptions of the purposes of the 15 expenditures to AT&T, totaling approximately \$4,770, disclosed on the January and July 2011 semiannual reports, provided a category of goods for which the expenditures were made and provided a description of the purposes of the expenditures, but the descriptions provided do not make clear the candidate or officeholder activity that was conducted by making the expenditures.

20. The description of the purpose of a \$100 expenditure to an individual disclosed on the January 2011 semiannual report stated: “Purpose: Category – Contribution/Donations Made By Candidate/Officeholder/Political Committee; Donation.” The respondent corrected the description of the purpose of the expenditure to state: “Purpose: Category – Salaries/Wages/Contract Labor; Description – campaign work; posting of political signs/billboard at political events.”
21. The descriptions of the purposes of the five expenditures to Enterprise Rental disclosed on the January 2011 semiannual report disclosed that the expenditures were for officeholder purposes but they did not describe the candidate or officeholder activity that was conducted by making the expenditures. The descriptions of the purposes of the expenditures were adequate.
22. The descriptions of the purposes of the five expenditures to Enterprise Rental disclosed on the July 2011 semiannual report described the candidate or officeholder activities that were conducted by making the expenditures as: Conference Horseshoe Bay; travel for judicial business; and Kick-off campaign.

IV. Findings and Conclusions of Law

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

Timely Filing of Report

1. A candidate is required to file two reports each year. The first report must be filed by July 15. The report covers the period beginning January 1, the day the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report must be filed by January 15. The report covers the period beginning July 1, the day the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
2. The respondent was required to file the January 2010 semiannual report by January 15, 2010. The respondent filed the report on January 30, 2010. There is credible evidence of a violation of section 254.063 of the Election Code. The commission originally waived the late filing penalty.

Disclosure of Assets

3. 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).
4. The respondent corrected the reports at issue to disclose assets on Schedule M. There is credible evidence of violations of section 254.0611(a)(3) of the Election Code.

Conversion of Political Contributions to Personal Use

5. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d). Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
6. The respondent swore that the expenditure was for campaign and officeholder purposes. There is no evidence that the respondent used the Sam's Wholesale Club annual membership purchased on April 15, 2010, to make political expenditures during the year after that date. There is insufficient evidence of a violation of section 253.035(a) of the Election Code.

Vendor Payee Information, Reimbursement of Political Expenditures, and Reporting Total Political Expenditures of \$50 and Less

7. Each report must include the amount of political expenditures that in the aggregate exceed \$50 (at the time at issue) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
8. Each report must include the total amount or a specific listing of the political expenditures of \$50 (at the time at issue) or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
9. A candidate who makes political expenditures from the candidate's 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 required to be filed under this title that covers the period in 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. *Id.* § 253.035(h).

10. 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: (1) the amount of political expenditures that in the aggregate exceed \$100 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 (2) included with the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. Ethics Commission Rules § 20.62(a).
11. Except as provided by subsection (a) of this section, a political expenditure 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 must be reported as follows: (1) the aggregate amount of the expenditure 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; (2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and (3) 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(b).
12. Ethics Commission Rules § 20.63 was amended on December 14, 2011. The following version of that rule was in effect before that date.

A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).

An officeholder is not required to report an officeholder expenditure from personal funds unless he or she intends to be reimbursed from political contributions. Ethics Commission Rules § 20.63(b).

A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures were fully reported on the report covering the period during which the expenditures were made; and (2) the report disclosing the expenditures indicates that the expenditures are subject to reimbursement. Ethics Commission Rules § 20.63(d).

A candidate's or officeholder's failure to comply with subsection (d) of this section may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules § 20.63(e).

A candidate or officeholder who has complied with subsection (d) of this section and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. Ethics Commission Rules § 20.63(f).

13. Regarding the \$5,000 withdrawn from the bank to pay for Christmas baskets, the respondent did not disclose the actual vendor payee information of the two persons that the respondent paid \$2,500 each for the Christmas baskets. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code as to the reporting of this \$5,000. The respondent corrected the error.
14. Regarding the \$157.68 reimbursement to an individual, there was one expenditure, for \$84.09, for which the respondent was required to disclose the actual vendor payee information and did not. Regarding the \$400 reimbursement to an individual, there were two expenditures, one for \$156.92 and one for \$215.75, for which the respondent was required to disclose the actual vendor payee information and did not. 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 as to these three expenditures totaling approximately \$460. The respondent corrected the errors.
15. Regarding the three reimbursements totaling approximately \$340 to staff members that all exceeded \$50, the respondent did not properly disclose the actual vendor, address, date, and amount of the expenditures. 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 as to these three expenditures. The respondent corrected the errors.
16. Regarding the \$1,000 the respondent reimbursed himself for political expenditures he previously made from his personal funds to pay campaign workers, the expenditures were \$50 or less. Although political expenditures of that amount are not generally required to be itemized, the respondent was required to itemize these expenditures under section 253.035(h) of the Election Code and section 20.63 of the Ethics Commission Rules if he intended to seek reimbursement for the expenditures. The respondent reimbursed himself for these expenditures without having itemized the expenditures. Therefore, there is credible evidence of a violation of section 253.035(h) of the Election Code and section 20.63(d) of the Ethics Commission Rules. The expenditures were campaign expenditures from personal funds of less than or equal to \$50 which were required to be disclosed under total political expenditures of \$50 or less if they were not itemized. The respondent did not itemize the

expenditures, and he did not disclose the expenditures under total political expenditures of \$50 or less. Therefore, there is credible evidence of a violation of section 254.031(a)(5) of the Election Code.

17. Regarding the \$75 reimbursement to a staff member for the purpose of: "Printing Expense," the respondent corrected the purpose of the expenditure to: "Purpose: Category – OTHER – gas; Description – Reimbursement: gasoline for driving officeholder to various political events." The respondent disclosed the actual payee information properly but did not properly disclose the purpose of the expenditure. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
18. Regarding the approximately \$110 expenditure for "Cell phone Accessories" and the \$800 expenditure for "Catering; Campaign R-Election Beef BBQ," the respondent properly disclosed the actual vendor, address, date, and amount of the expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code as to those expenditures.

Descriptions of the Purposes of Political Expenditures

19. Each report must include the amount of political expenditures that in the aggregate exceed \$50 (at the time at issue) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
20. Ethics Commission Rules § 20.61(a) applies to expenditures made on or after July 1, 2010. It states: For reporting required under section 254.031 of the Election Code, the purpose of an expenditure means: a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. Ethics Commission Rules § 20.61(a).
21. The descriptions of the purposes of the 22 expenditures disclosed on the January and July 2010 semiannual reports were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.
22. Regarding the descriptions of the purposes of the 15 expenditures to AT&T totaling approximately \$4,770 disclosed on the January and July 2011 semiannual reports, the respondent properly provided a category of goods for which the expenditures were made and provided a description of the purposes of the expenditures. However, Ethics Commission

Rule § 20.61(a) requires the filer to include in the description of the purpose of an expenditure a brief statement or description of the candidate, officeholder, or political committee activity that was conducted by making the expenditure. The descriptions provided do not make clear the candidate or officeholder activity that was conducted by making the expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules.

23. Regarding the description of the purpose of the \$100 expenditure to an individual, disclosed on the January 2011 semiannual report, the respondent corrected the purpose from: “Purpose: Category – Contribution/Donations Made By Candidate/Officeholder/Political Committee; Donation,” to: “Purpose: Category – Salaries/Wages/Contract Labor; Description – campaign work; posting of political signs/billboard at political events.” The respondent did not properly disclose the purpose, including the category, of the expenditure. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules.
24. Regarding the descriptions of the purposes of the five expenditures to Enterprise Rental disclosed on the January 2011 semiannual report, the respondent did not describe the candidate or officeholder activity that was conducted by making the expenditures but he did disclose that the expenditures were for officeholder purposes. The descriptions of the purposes of the expenditures were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules as to those expenditures.
25. Regarding the descriptions of the purposes of the five expenditures to Enterprise Rental disclosed on the July 2011 semiannual report, the respondent described the candidate or officeholder activities that were conducted by making the expenditures. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules as to those expenditures.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission’s findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.

3. The respondent acknowledges that: 1) a candidate is required to file two reports each year. The second report must be filed by January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31; 2) 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; 3) each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 before September 28, 2011) at the time at issue) 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; 4) 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 must be reported with accordance with section 20.62 of the Ethics Commission Rules; 5) a candidate who makes political expenditures from the candidate's 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 required to be filed under this title that covers the period in 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; 6) each report must include the total amount or a specific listing of the political expenditures of \$100 (\$50 before September 28, 2011) or less made during the reporting period; and 7) for reporting required under section 254.031 of the Election Code, the purpose of an expenditure means: a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the 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 \$1,000 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31112277.

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

Rodolfo "Rudy" Delgado, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director