

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MELISSA NORIEGA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2905124

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-2905124. A quorum of the commission was present. The commission determined that 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, laws and rules 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 failed to properly disclose political contributions and improperly disclosed political expenditures as reimbursements. The complaint also alleged that the respondent converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent is a Houston city council member and was a candidate in the June 16, 2007, runoff election and the November 6, 2007, election. The respondent was an unopposed candidate in the November 3, 2009, election.
2. With regard to the allegation that the respondent converted political contributions to personal use, the complaint included a list of 21 political expenditures disclosed by the respondent in her July 2007, January 2008, July 2008, and January 2009 semiannual reports, as well as in her 8-day runoff report for the June 2007 runoff election and her 30-day pre-election report for the November 2007 election

3. Regarding the allegation that the respondent failed to properly disclose political contributions maintained, evidence indicated that the respondent disclosed as political contributions maintained the actual bank balance as of the last day of each reporting period.
4. On June 8, 2007, the respondent filed an original 8-day runoff report for the June 2007 runoff election that disclosed \$2,030 in unitemized political contributions, \$108,622.85 in total political contributions, \$807.15 in unitemized political expenditures, \$117,302.81 in total political expenditures, \$56,218.45 in total political contributions maintained as of the last day of the reporting period, and \$5,000 in total outstanding loans. Schedule F (used for itemizing political expenditures) disclosed 21 political expenditures totaling approximately \$7,460, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed a political expenditure of \$60.92 to a restaurant for the purpose of "Campaign staff meeting," which the sworn complaint alleged was a conversion to personal use.
5. The respondent swore that several payments at issue were not reimbursements. The respondent denied the allegation that the restaurant expenditure was a personal use of political contributions.
6. In response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected 8-day runoff report for the June 2007 runoff election.¹ Schedule F disclosed the payee for approximately \$2,210 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period.² The corrected report disclosed that the respondent reimbursed one individual approximately \$1,000 for political expenditures made during the reporting period and that the respondent reimbursed another individual approximately \$840 for political expenditures made during the reporting period.³ Although Schedule E (used for reporting loans) of the original report did not disclose loans from either of these individuals, Schedule F of both the original and corrected report identified the individuals that were reimbursed

¹ Corrected reports for the July 2007, January 2008, July 2008, and January 2009 semiannual reports, as well as the corrected 8-day runoff report for the June 2007 runoff election and corrected 30-day pre-election report for the November 2007 election, did not amend contribution and expenditure total amounts. The corrected 8-day pre-election report for the November 2007 election included a new political expenditure total, but did not amend other total amounts.

² The corrected reports filed in response to the sworn complaint allegations disclosed additional political expenditures that were previously disclosed as reimbursements to individuals but which, according to the political expenditures itemized on Schedule F, did not in the aggregate exceed \$50 to a payee during the reporting period.

³ At the time of this report, political expenditures by a staff member that were subject to reimbursement were required to be disclosed as a loan if the amount exceeded \$500. In November 2007, the amount was raised to \$5,000.

and the amount of the reimbursement. Schedule F of the corrected report also changed the purpose of the \$60.92 restaurant expenditure at issue to “Lunch meeting with campaign staff.”

7. On July 16, 2007, the respondent filed an original July 2007 semiannual report that disclosed \$120 in unitemized political contributions, \$51,257.83 in total political contributions, \$526.36 in unitemized political expenditures, \$98,453.07 in total political expenditures, \$9,399.75 in total political contributions maintained as of the last day of the reporting period, and \$5,000 in total outstanding loans. Schedule F disclosed four political expenditures totaling approximately \$1,350, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed a political expenditure of \$310.25 to a restaurant for the purpose of “Campaign meeting/reception,” which the sworn complaint alleged was a conversion to personal use.
8. The respondent swore that one payment at issue was not a reimbursement. The respondent also denied the allegation that the restaurant expenditure at issue was a personal use of political contributions.
9. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected July 2007 semiannual report. Schedule F disclosed the payee for approximately \$990 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period. The corrected report disclosed that the respondent reimbursed an individual approximately \$610 for political expenditures made during the reporting period. Although Schedule E of the original report did not disclose a loan from the individual, Schedule F of both the original and corrected report identified the individual that was reimbursed and the amount of the reimbursement. Schedule F of the corrected report also changed the purpose of the restaurant expenditure at issue to “Food and beverage: Meeting with fundraising staff and committee.”
10. On October 9, 2007, the respondent filed an original 30-day pre-election report for the November 2007 election that disclosed \$110 in unitemized political contributions, \$38,878.86 in total political contributions, \$1,487.30 in unitemized political expenditures, \$30,642.86 in total political expenditures, \$9,414.36 in total political contributions maintained as of the last day of the reporting period, and \$15,000 in total outstanding loans. Schedule F disclosed three political expenditures totaling approximately \$1,560, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed six political expenditures to restaurants for the purposes of “Staff Meeting,” “Elected Officials,” “Constituent meeting,” “Stakeholders Meeting,” “Meeting,” and “Staff Meeting,” as well as a political expenditure to Spec’s for “Campaign Meeting,” which the sworn complaint alleged were conversions to personal use.

11. The respondent swore that the first name of one payee was omitted from the original report and would be added to the corrected report. The respondent also denied the allegation that the restaurant expenditures at issue and the expenditure to Spec's were a personal use of political contributions.
12. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected 30-day pre-election report for the November 2007 election. Schedule F disclosed the payee for approximately \$520 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period, and also disclosed the first name of one payee, which was omitted from the original report. The report did not disclose that the respondent reimbursed an individual more than \$500 during the reporting period. Schedule F also changed the purpose of eight political expenditures relating to food and beverages purchased for meetings with campaign staff, elected officials, constituents, and supporters, as well as "Lunch for council staff."
13. On October 29, 2007, the respondent filed an original 8-day pre-election report for the November 2007 election that disclosed \$44,587.25 in total political contributions, \$539.71 in unitemized political expenditures, \$46,009.96 in total political expenditures, \$26,372.67 in total political contributions maintained as of the last day of the reporting period, and \$15,000 in total outstanding loans. The report left blank the box for unitemized political contributions. Schedule F disclosed five political expenditures totaling approximately \$1,310, which the sworn complaint alleged were improperly disclosed as reimbursements.
14. The respondent swore that an expenditure disclosed as a reimbursement was included by mistake and had previously been disclosed on the 30-day pre-election report, but that another reimbursement had been inadvertently omitted from the original report. The respondent swore this reimbursement would be disclosed on the corrected report. The respondent also swore two payments at issue were not reimbursements.
15. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected 8-day pre-election report for the November 2007 election. The corrected report changed the total amount of political expenditures from \$46,009.96 to \$46,050.87. The report did not disclose that the respondent reimbursed an individual more than \$500 during the reporting period. Schedule F disclosed the payee for approximately \$700 in political expenditures that were previously disclosed as reimbursements to individuals, or which were otherwise previously undisclosed, and that in the aggregate exceeded \$50 to the payee during the reporting period.
16. On January 15, 2008, the respondent filed an original January 2008 semiannual report that disclosed zero unitemized political contributions, \$8,685 in total political contributions, \$1,164.85 in unitemized political expenditures, \$31,418.86 in total political expenditures, \$6,679.52 in total political contributions maintained as of the last day of the reporting period,

and \$15,000 in total outstanding loans. Schedule F disclosed two political expenditures totaling approximately \$870, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed a political expenditure of \$161.40 to a restaurant for the purpose of "Staff Luncheon," and a political expenditure of \$50 to the Houston Livestock Show and Rodeo for the purpose of "Donation," which the sworn complaint alleged were conversions to personal use.

17. The respondent denied the allegation that the restaurant expenditure at issue and the expenditure to the Houston Livestock Show and Rodeo were a personal use of political contributions.
18. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected January 2008 semiannual report. Schedule F disclosed the payee for approximately \$680 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period. The report did not disclose that the respondent reimbursed an individual more than \$5,000 during the reporting period. Schedule F changed the purpose of the expenditure to the Houston Livestock Show and Rodeo to "Donation for program ad" and changed the purpose of the restaurant expenditure at issue to "Holiday lunch with council staff."
19. On July 15, 2008, the respondent filed an original July 2008 semiannual report that disclosed \$465 in unitemized political contributions, \$35,325 in total political contributions, \$2,603.15 in unitemized political expenditures, \$31,681.19 in total political expenditures, \$7,490.11 in total political contributions maintained as of the last day of the reporting period, and \$15,000 in total outstanding loans. Schedule F disclosed four political expenditures totaling approximately \$580, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed three political expenditures totaling approximately \$220 to restaurants for the purpose of "Meeting" or "Office meeting," which the sworn complaint alleged were conversions to personal use.
20. The respondent denied the allegation that the restaurant expenditures at issue were a personal use of political contributions.
21. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected July 2008 semiannual report. Schedule F disclosed the payee for approximately \$400 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period. The report did not disclose that the respondent reimbursed an individual more than \$5,000 during the reporting period. Schedule F also changed the purpose of the three restaurant expenditures at issue to "Volunteer appreciation lunch," "Food (constituent funeral)," and "Food and beverage: Staff/constituent meeting."

22. On January 15, 2009, the respondent filed an original January 2009 semiannual report that disclosed zero unitemized political contributions, zero total political contributions, \$2,843.88 in unitemized political expenditures, \$7,432.90 in total political expenditures, \$2,630.19 in total political contributions maintained as of the last day of the reporting period, and \$15,000 in total outstanding loans. Schedule F disclosed four political expenditures totaling approximately \$1,380, which the sworn complaint alleged were improperly disclosed as reimbursements. Schedule F also disclosed five political expenditures totaling approximately \$520 to restaurants for the purpose of “Meeting,” a political expenditure of \$104 to a bookstore for the purposes of “Books,” and a political expenditure of \$65.80 to a newspaper for the purpose of “Subscription,” which the sworn complaint alleged were conversions to personal use.
23. The respondent denied the allegation that the restaurant expenditures at issue, as well as the expenditures to the bookstore and newspaper at issue, were a personal use of political contributions.
24. Also in response to the sworn complaint allegations, on January 24, 2010, the respondent filed a corrected January 2009 semiannual report.⁴ Schedule F disclosed the payee for approximately \$1,280 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the reporting period. The report did not disclose that the respondent reimbursed an individual more than \$5,000 during the reporting period. Schedule F also changed the purpose of the five restaurant expenditures at issue to meetings with campaign staff, consultants, and constituents, changed the purpose of the bookstore expenditure at issue to “Books on policy and governance,” and changed the purpose of the newspaper expenditure at issue to “Office subscription.”
25. In summary, the respondent’s corrected reports, which covered reporting periods from May 3, 2007, through December 31, 2008, disclosed the payee for approximately \$6,780 in political expenditures that were previously disclosed as reimbursements to individuals and that in the aggregate exceeded \$50 to the payee during the relevant reporting period.

IV. Findings and Conclusions of Law

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

⁴The corrected January 2009 semiannual report did not include a correction affidavit.

Political Contributions

1. Each campaign finance report must include, in pertinent part, the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
2. Each campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, 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. *Id.* § 254.031(a)(8).
3. Evidence indicated that the respondent disclosed political contributions maintained as the actual bank balance as of the last day of the reporting periods. The sworn complaint did not include evidence that the respondent failed to properly disclose the contribution balance, or that the respondent otherwise failed to disclose political contributions accepted. Therefore, there is credible evidence of no violation of sections 254.031(a)(6) and 254.031(a)(8) of the Election Code.

Staff Reimbursement

4. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).
5. Political expenditures made out of personal funds by a staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, or political committee that in the aggregate do not exceed \$5,000 (\$500 until November 18, 2007) 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 \$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

- (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

Ethics Commission Rules § 20.62(a).⁵

6. If the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 (\$500 until November 18, 2007) in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, or political committee must be reported as follows:
 - (1) 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 candidate, officeholder, or political committee;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the candidate, officeholder, or political committee; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate, officeholder, or political committee.

Id. § 20.62(b).

7. Original campaign finance reports filed by the respondent from June 2007 through January 2009 disclosed approximately \$6,780 in political expenditures as reimbursements to individuals, which in the aggregate exceeded \$50 to the payee during the relevant reporting period and, thus, were required to be itemized on Schedule F. Additionally, the respondent reimbursed two staff members more than \$500 for political expenditures made during the reporting period covered by the 8-day runoff report for the June 2007 runoff election, and reimbursed one staff member more than \$500 for political expenditures made during the reporting period covered by the July 2007 semiannual report. Although the respondent was required to disclose loans from the staff members under section 20.62 of the Ethics Commission Rules, both the original and corrected reports identified the staff members that were reimbursed and the amount of the reimbursement.
8. Although the respondent filed corrected reports in response to the sworn complaint allegations to disclose the proper payee for approximately \$6,780 in political expenditures, this information was not included when the reports were originally due. 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.

⁵ Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. Prior to its adoption, Ethics Advisory Opinion No. 450 (2003) described the proper way to report staff reimbursement. On October 26, 2007, the rule was amended to raise the threshold for reporting staff reimbursements as a loan from \$500 to \$5,000. The change became effective on November 18, 2007.

Personal Use of Political Contributions

9. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. Personal use means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. ELEC. CODE § 253.035(a).
10. The respondent denied the allegation that the 21 political expenditures cited in the sworn complaint were converted to personal use. Several of the political expenditures at issue disclosed in original reports filed by the respondent described an expenditure purpose that, on the face, appeared to further a campaign or officeholder purpose. The respondent also filed corrected reports to provide additional information about the political expenditures at issue. The complaint did not provide any additional evidence that the political expenditures at issue primarily furthered an individual or family purpose not connected with the performance of duties or activities as a candidate or officeholder. Therefore, there is credible evidence of no violation of section 253.035(a) 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 each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

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

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$700 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-2905124.

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

Melissa Noriega, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director