

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAMES B. "BRAD" MORIN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31207213 AND SC-31207214

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 29, 2014, to consider sworn complaints SC-31207213 and SC-31207214. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.155, 253.003, and 253.094 of the Election Code and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent knowingly accepted political contributions in excess of prescribed limits and knowingly accepted political contributions from a corporation or labor organization.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful, opposed candidate for district judge of the 71st Judicial District (Harrison County) in the 2012 election cycle.

Political Contributions in Excess of Prescribed Limits

2. The campaign finance reports at issue in sworn complaint SC-31207214 are the January and July 2012 semiannual reports, and 30-day and 8-day pre-election reports related to the May 2012 primary election. The reports disclosed the following political contributions and pledges:

January 2012 Semiannual Report

[Entity]	\$1,500 (returned by respondent)
[Law Firm]	\$1,250
[Law Firm]	\$2,500
[Husband and Wife]	\$1,000 each (\$2,000 total) (respondent returned \$1,000)
[Husband and Wife]	\$1,000 each (\$2,000 total) (respondent returned \$1,000)
[Husband and Wife]	\$1,000 each (\$2,000 total) (respondent returned \$1,000)

30-day Pre-election Report

[Husband and Wife]	\$1,000 each (\$2,000 total) (respondent returned \$1,000)
[Brother and Sister]	\$1,000 each (\$2,000 total)
[Husband and Wife]	\$1,000 each (\$2,000 total) (respondent returned \$1,000)
[Sister and Brother-in-Law]	\$1,000 each (\$2,000 total)

8-day Pre-election Report

[Law Firm]	\$1,500
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July 2012 Semiannual Report

[Law Firm]	Pledged \$2,000
[Law Firm]	Pledged \$2,500
[Husband and Wife]	Pledged \$1,000 each (\$2,000 total) (respondent returned \$1,000)

3. In response to the complaint, the respondent swore:

I do not believe that the contribution from my law firm in the amount of \$1,250.00 and the contribution from [a law firm] were improper as I believe law firms under the Code are entitled to contribute up to \$6,000.00 in Judicial Elections. ... [U]ntil the complaint was filed, I had no idea that a husband and wife were considered as one individual.

4. As to the pledges disclosed on the July 2012 semiannual report, the respondent swore that these were contributions actually received and not pledges. The respondent accepted a total of \$9,750 in political contributions from four different law firms, none of which was returned. The respondent also accepted a total of \$12,000 in political contributions from married couples, \$6,000 of which was returned.
5. Regarding the political contributions from two individuals, the respondent swore: “[The two individual contributors] are not husband and wife, they are brother and sister who are not in the same household.”
6. The Texas Secretary of State (SOS) 2011 Population Certification for Judicial Offices indicates that the 71st Judicial District has a population less than 250,000.

Political Contribution from a Corporation

7. Sworn complaint SC-31207213 alleged that the respondent accepted a prohibited political contribution from a corporation. The respondent’s 30-day pre-election report filed in connection with the May 2012 election, disclosed a \$500 political contribution from a corporation on March 6, 2012.
8. SOS records show that the contributor is a domestic for-profit corporation.
9. In response to the complaint, the respondent swore: “I accepted a contribution from [an individual].... I believed the contribution was from [an individual] even though he had written it on a company check.” The respondent returned the contribution to the corporation.
10. On August 22, 2011, the respondent filed a campaign treasurer appointment on which he signed a statement acknowledging: “I am aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.”

Timely Response to Notices of Sworn Complaints

11. Sworn Complaints SC-31207213 and SC-31207214 were filed on July 19, 2012. The commission sent notices of the sworn complaints to the respondent by delivery confirmation on July 25, 2012. According to the United States Postal Service’s record of the delivery, the

notices of these complaints were delivered on July 27, 2012. The notices informed the respondent that the alleged violations in the sworn complaints were Category Two violations, and that a response was required not later than 25 business days from the date the notices were received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed.

12. On September 4, 2012, the respondent's attorney submitted a written request for an extension of the deadline. The deadline was extended to September 18, 2012.
13. On October 30, 2012, commission staff contacted the respondent's attorney and left a message stating that the commission had still not received a response. On June 6, 2013, commission staff contacted the respondent's attorney a second time and left a message stating that the commission had yet to receive a response. The respondent's written response was received by the commission via facsimile on June 10, 2013. In the written response, the respondent's attorney indicated that the responses were not submitted timely "due to some confusion with my client."

IV. Findings and Conclusions of Law

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

Political Contributions in Excess of Prescribed Limits

Political Contributions from Law Firms

1. A judicial candidate or officeholder may not accept political contributions from a person that in the aggregate exceed \$1,000 in connection with an election for a judicial district office if the population of the judicial district is less than 250,000. ELEC. CODE § 253.155(a), (b).
2. A judicial candidate or officeholder may not accept a political contribution in excess of \$50 from a person if the person is a law firm, a member of a law firm, or a general-purpose committee established or controlled by a law firm and the contribution when aggregated with all political contributions accepted by the candidate or officeholder from the law firm, other members of the law firm, or a general-purpose committee established or controlled by the law firm in connection with the election would exceed six times the applicable contribution limit under Section 253.155 of the Election Code. *Id.* § 253.157(a).
3. In Ethics Advisory Opinion No. 342, the commission determined that under the Code Construction Act, a law firm is a person. Because a law firm is a person, and contributions from a person may not exceed the limit under section 253.155 of the Election Code, a candidate for district judge in a judicial district with a population less than 250,000 may not accept political contributions that exceed \$1,000 in the aggregate per election. Ethics Advisory Opinion No. 342 (1996). The commission noted that section 253.157 of the

Election Code also limits a judicial candidate in what he can accept from persons affiliated with the same law firm. *Id.* at n.1.

4. In Ethics Advisory Opinion No. 274, the commission considered the application of the contribution limits under both sections 253.155 and 253.157 of the Election Code. The commission stated, in pertinent part:

Election Code section 253.157 aggregates contributions made by members of the same law firm and subjects them to an overall limit for the firm. In other words, members of the same law firm are treated as a unit for purposes of the law. Accordingly, contributions by an individual member of a law firm count against the firm's limit if they were made while the individual was a member of the firm. The contributions [a member] made while working for [the firm] count against [the firm] and against [the member's] personal limit. ... If [the member] makes further contributions to [a judicial candidate] while employed by his new firm ... those contributions will count against [the new firm's] limits and against his personal contribution limit.

Ethics Advisory Opinion No. 274 (1995). The summary of the opinion also stated that a judicial candidate may not accept from a member of a law firm political contributions exceeding the maximum amount prescribed in section 253.155 of the Election Code. The commission also noted:

Instead of increasing the maximum an individual is allowed to contribute, section 253.157 in some cases greatly reduces an individual's contribution limit. Once a law firm has reached its contribution limit under section 253.157, a future contribution by a member of that law firm to the same candidate in connection with the election is restricted to \$50, despite the higher contribution limit set by section 253.155.

Id. at n.4.

5. Sworn complaint SC-31207214 alleged that the respondent, as a candidate for district judge, exceeded the contribution limit by accepting contributions in excess of \$1,000 each from five different law firms. Based on the population of the judicial district, the contribution limit under section 253.155 of the Election Code was \$1,000. The respondent accepted the contributions at issue and did not return them.
6. The respondent accepted five separate contributions from law firms that exceeded the \$1,000 limit. The total amount over the limit accepted from those firms was approximately \$4,750. Therefore, in accordance with the applicable advisory opinions previously cited, there is credible evidence of violations of section 253.155 of the Election Code.

Political Contributions from Spouses

7. For purposes of section 253.155 of the Election Code, a contribution by the spouse of an individual is considered to be a contribution by the individual. ELEC. CODE § 253.158(a).
8. The contribution limits prohibited the respondent from accepting campaign contributions from any person that exceeded \$1,000. When a judicial candidate accepts a campaign contribution from a person who is married, the contribution is also considered to be a contribution from the person's spouse for purposes of the contribution limits.
9. Credible evidence establishes that the respondent accepted campaign contributions in excess of \$1,000 from five different married couples, totaling \$12,000. Therefore, there is credible evidence of violations of section 253.155 of the Election Code.

Political Contribution from Sister and Brother-in-Law

10. Section 253.155 of the Election Code does not apply to an individual who is related to the candidate or officeholder within the second degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code. ELEC. CODE § 253.159. Two individuals are related to each other by consanguinity if one is a descendant of the other, or they share a common ancestor. GOV'T CODE § 573.022(a).
11. An individual's relatives within the second degree by consanguinity include the individual's sister. *Id.* § 573.023(c)(2).
12. The respondent disclosed one contribution from the respondent's sister of \$1,000 and one contribution from the respondent's brother-in-law for \$1,000. However, because the respondent's sister and brother-in-law are married, section 253.158 of the Election Code attributes the total contribution of \$2,000 to both the respondent's sister and brother-in-law.
13. The contribution limits do not apply to the respondent's brother-in-law because the respondent is related to him within the second degree of consanguinity. Thus, the respondent could not accept a campaign contribution in excess of \$1,000 from his brother-in-law. There is credible evidence to establish that the respondent accepted a contribution exceeding \$1,000 from his brother-in-law. Therefore, there is credible evidence of a violation of section 253.155 of the Election Code.

Other Political Contributions

14. A "person" is defined as an individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government. Ethics Commission Rules § 6.1(13).

15. Regarding the \$1,500 political contribution from an entity, commission rules define a person to include a corporation, association, or other entity. It is unclear whether the entity was a corporation. However, the respondent was prohibited from accepting more than \$1,000 in political contributions from the entity at issue. Therefore, there is credible evidence of a violation of section 253.155 of the Election Code.
16. Regarding the political contributions of \$1,000 each from a brother and sister, section 253.155 of the Election Code does not limit contributions made by siblings. Therefore, there is credible evidence of no violation of section 253.155 of the Election Code with regard to these contributions.

Political Contribution from a Corporation

17. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. *Id.* § 253.003(b).
18. A corporation may not make a political contribution that is not authorized by subchapter D, chapter 253, Election Code. *Id.* § 253.094(a).
19. 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. *Id.* § 253.091.
20. The respondent accepted a political contribution of \$500 from a corporation. The respondent signed his campaign treasurer appointment on August 22, 2011, acknowledging the restrictions on corporate contributions. According to the respondent, the contribution at issue was written on a corporate check. Thus, there is credible evidence establishing the respondent knowingly accepted a political contribution from a prohibited corporation in violation of sections 253.003 and 253.094 of the Election Code.

Timely Response to Notices of Sworn Complaints

21. If the alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by section 571.123(b) not later than the 25th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(b)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
22. The deadline for the respondent's written response to these complaints was September 18, 2012, and the respondent's written response was not received by the commission until June 10, 2013. Accordingly, the response was filed over eight months after the response deadline. Therefore, there is credible evidence of violations of section 571.1242(c) of the Government 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 these sworn complaints.
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 a judicial candidate or officeholder may not knowingly accept a political contribution from a person that in the aggregate exceeds the statutory limit on contributions.

The respondent acknowledges that for purposes of the judicial contribution limits, a contribution by the spouse or child of an individual is considered to be a contribution by the individual.

The respondent acknowledges that for purposes of the judicial contribution limits, a contribution by a law firm must comply with the limits imposed by section 253.155 of the Election Code.

The respondent acknowledges that a person who receives a political contribution that exceeds the judicial contribution limits shall return the contribution to the contributor not later than the later of the last day of the reporting period in which the contribution is received or the fifth day after the date the contribution is received.

The respondent acknowledges that a candidate or officeholder may not accept a political contribution from a corporation.

The respondent acknowledges that if an alleged violation in a sworn complaint is a Category Two violation, the respondent must respond to the notice required by Section 571.123(b) of the Government Code not later than the 25th business day after the date the respondent receives the notice and that a respondent's failure to timely respond to a sworn complaint is a separate Category One violation.

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 \$1,175 civil penalty, contingent upon the respondent reimbursing the amount at issue not returned (\$5,750) to the respective contributors by November 26, 2014. If the respondent does not reimburse the amount at issue by November 26, 2014, then the commission imposes a \$6,350 civil penalty. The respondent shall furnish to the commission evidence of required payments.

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-31207213 and SC-31207214.

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

James B. "Brad" Morin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley,
Executive Director