



TEXAS ETHICS COMMISSION

P. O. Box 12070, Capitol Station
Austin, Texas 78711-2070

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December 11, 2008

Mr. Edward M. Shack
Attorney at Law
814 San Jacinto Boulevard, Suite 202
Austin, Texas 78701-2510

**CERTIFIED MAIL NO. 7008 1300 0000 4508 5623,
RETURN RECEIPT REQUESTED**

Re: Notice of Final Resolution, SC-2707161 (Justice Nathan L. Hecht)

Dear Mr. Shack:

The Texas Ethics Commission has completed its consideration of Sworn Complaint SC-2707161 by issuing the enclosed Final Order.

The Ethics Commission made findings of fact, conclusions of law, and found that Justice Hecht committed violations of sections 253.155, 253.157, and 254.031 of the Election Code, and imposed a civil penalty of \$29,000 in connection with these violations.

Pursuant to section 571.140(b) of the Government Code, this Final Order is not confidential and may be disclosed by Ethics Commission members and staff.

Please call me at (800) 325-8506 or (512) 463-5800 if you have any questions concerning the enclosed Final Order.

Sincerely,

A handwritten signature in cursive script that reads "Cassandra M. Mitchell".

Cassandra M. Mitchell
Assistant General Counsel

Enclosure: Final Order

CMM:mc

c: Mr. Nelson Alex Winslow
815 Brazos Street, Suite 603
Austin, Texas 78701-2509

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TEXAS ETHICS COMMISSION

IN THE MATTER OF
NATHAN L. HECHT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2707161

FINAL ORDER

I. Recitals

On July 24, 2007, sworn complaint SC-2707161 was filed with the Texas Ethics Commission. On August 14, 2008, the commission held a preliminary review hearing. After the completion of the preliminary review hearing, the commission was unsuccessful in resolving and settling the sworn complaint. The commission ordered that a formal hearing be held. On December 4, 2008, the commission held a formal hearing to consider sworn complaint SC-2707161. A quorum of the commission was present. The respondent, who was represented by counsel, was present.

II. Findings of Fact

1. The respondent is currently a Justice of the Supreme Court of Texas and held that office at all times relevant to sworn complaint SC-2707161.
2. The sworn complaint alleges that the respondent accepted a political contribution that exceeded the statutory contribution limits and failed to disclose the contribution. The complaint also alleges that the respondent failed to disclose the principal occupation and job title and the full name of the employer or law firm of the contributor.
3. In October 2005, two complaints were filed against the respondent with the State Commission on Judicial Conduct (SCJC). The complaints arose in connection with the respondent's public office as a Justice of the Supreme Court of Texas. The respondent hired a law firm, Jackson Walker, to represent him in these matters.
4. In May 2006, the SCJC issued a public admonition against the respondent. The respondent requested a review of the admonition by a special court.
5. In June 2006, the respondent contacted the Texas Ethics Commission asking whether a judge who is investigated and publicly admonished by the SCJC and who requests judicial review of the SCJC's decision may use political contributions to pay attorneys fees, expenses and costs incurred in relation to SCJC and court proceedings. On July 28,

- 2006, the commission issued a letter indicating that, based on the facts provided, the use of political contributions to defray expenses incurred in connection with the admonition by the SCJC would be permissible because the SCJC matter was brought against the respondent in his capacity as a judicial officeholder.
6. In October 2006, the special court issued a decision dismissing the admonition and finding the respondent not guilty of the charges against him.
 7. Jackson Walker provided legal services to the respondent related to the SCJC admonishment as well as the hearing before the special court. Individual attorneys and other persons employed by Jackson Walker were compensated for those services.
 8. In November 2006, the respondent and a Jackson Walker attorney met with the Texas State Attorney General, and made an oral demand on the state to pay the respondent's legal fees. The demand was made in the event that the respondent decided to bring legal action against the state in the future.
 9. The respondent received an invoice from Jackson Walker dated December 27, 2006. The invoice disclosed total legal fees of \$476,970, less a 15% discount, and total expenses of \$5,847.44. The total fee less the discount was \$410,529.89.
 10. The fees billed to the respondent by Jackson Walker were not reimbursable with public money.
 11. The respondent mailed a solicitation letter dated February 3, 2007, requesting contributions to help defray his legal expenses. In the letter, the respondent stated that his attorney and his attorney's law firm (Jackson Walker) contributed much of their time *pro bono*, substantially reducing their fees, and that the firm agreed to designate a large part of the fees as an in-kind contribution to his campaign. The respondent also stated that even after the reductions his legal fees exceed \$350,000.
 12. On February 24, 2007, the respondent and a Jackson Walker attorney exchanged e-mails confirming an additional 25% reduction to the fee that was characterized as being considered a *pro bono* component.
 13. On March 7, 2007, the respondent accepted \$446,550 in political contributions.
 14. In March 2007, at the request of the respondent, HB 2725 and SB 1301 were introduced during the 80th legislative session. The bills required the state to reimburse the legal expenses of a judge who successfully defended a sanction imposed by the SCJC. Neither bill became law.

15. In March and April 2007, the respondent received reminder statements from Jackson Walker. Each statement shows a total past due balance of approximately \$410,529.89.
16. On April 17, 2007, the respondent paid Jackson Walker \$313,744.85 for legal fees, \$5,847.44 of which was for expenses. This expenditure was reported on the respondent's July 2007 semiannual campaign finance report as a political expenditure.
17. The respondent asserts that when he referred to an in-kind contribution by the firm in his solicitation letter of February 3, 2007, he "misspoke in the haste of finishing the letter." The respondent asserts that neither his attorney nor Jackson Walker ever offered him a political contribution.
18. The respondent asserts that the reduction in fee was the result of work done *pro bono* or a normal business negotiation.
19. The respondent has not made any other expenditure to Jackson Walker for the legal services at issue.
20. Two witnesses who were admitted as experts in the area of law firm billing and *pro bono* work testified on behalf of the respondent, and provided detail about traditional law firm billing practices and the provision of *pro bono* legal services. According to the testimony, the accounting departments of large law firms take great care in reviewing their billings and only send out a bill to a client when they believe the amount included in the bill is reasonable.

III. Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. A contribution means, in pertinent part, a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. ELEC. CODE § 251.001(2).
3. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
4. A campaign contribution means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3). Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.*

5. An officeholder contribution means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001 (4).
6. An in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. Ethics Commission Rules § 20.1(8).
7. The respondent asserts that Jackson Walker did not offer, and that he did not accept, a political contribution. However, the facts show that Jackson Walker offered to discount the fee that the respondent incurred in connection with his case before the State Commission on Judicial Conduct. The case arose in connection with the respondent's public office as a Texas Supreme Court Justice. The fees incurred were not reimbursable with public money. The facts show that, by definition, the discount offered by Jackson Walker and accepted by the respondent was an officeholder contribution.¹
8. The commission recognizes that it is not uncommon for a law firm to negotiate the amount of payment due for a bill for legal services. However, based on the specific facts of this case, including the demands made by the respondent upon the state to pay the fees, the solicitation letter, the sworn statements made by the respondent, information provided in response to the complaint, and other evidence from the formal hearing, the evidence indicates that the respondent received an in-kind political contribution from Jackson Walker.
9. Each report filed by a candidate 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.
10. Under section 254.033 of the Election Code, a political contribution consisting of an individual's personal service is not required to be reported if the individual receives no compensation for the service. *See also* Ethics Advisory Opinion No. 360 (1997).
11. The evidence indicates that the Jackson Walker law firm provided services and that the individual attorneys and employees of the firm were compensated for those services.

¹ If the discounted legal fee is not a political contribution, then the question of whether or not it is an illegal benefit under § 36.08 of the Penal Code is raised.

Therefore, the respondent was required to report the in-kind political contribution. The evidence shows that the respondent failed to report this in-kind contribution. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code.

12. As part of the allegations that the respondent failed to report the in-kind contribution at issue, the complaint also alleges that the respondent failed to provide the principle occupation and job title of the individual from whom he received the in-kind contribution, in violation of section 254.0611 of the Election Code. This section of the Election Code applies to political contributions received from an individual and not to political contributions received from an entity. The evidence shows that a law firm and not an individual made the contribution at issue. Thus, there is credible evidence of no violation of section 254.0611 of the Election Code.
13. An individual, or a law firm, may contribute up to \$5,000 in connection with an election to a statewide judicial candidate or officeholder. ELEC. CODE §§ 253.155(a), (b).
14. A person who receives a political contribution that violates this section 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. ELEC. CODE §§ 253.155(e) and 253.157(b).
15. The aggregate total of contributions that a candidate or officeholder may accept from members of a law firm, including the firm itself, may not exceed \$30,000. ELEC. CODE § 253.157(a).
16. For purposes of the contribution limits, Jackson Walker itself could have contributed a maximum of \$5,000 to the respondent.
17. The evidence indicates that Jackson Walker billed the respondent for legal services and discounted the bill. In so doing, Jackson Walker made an in-kind political contribution exceeding \$5,000.
18. The evidence indicates that by accepting the in-kind contribution of legal services the respondent exceeded the applicable \$5,000 contribution limit. The respondent did not return the amount exceeding the limit and only paid the discounted amount of the legal services. Therefore, there is credible evidence of a violation of sections 253.155 and 253.157 of the Election Code.

IV. Confidentiality

The final order entered by the commission after the completion of a formal hearing on this complaint describes violations that the commission has determined are neither technical nor *de*

minimis. Accordingly, this final order is not confidential pursuant to Section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

V. Sanction

The commission imposes a \$29,000 civil penalty against the respondent. The commission orders that the respondent pay the penalty within 30 days of the date of this order.

Date: December 11, 2008

FOR THE COMMISSION



David A. Reisman
Executive Director
Texas Ethics Commission