

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-40

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On August 8, 2012, the Executive Ethics Board (Board) received a Whistleblower Investigation report from the State Auditor's Office (SAO). The report alleges that Dr. Withheld Withheld Professor, School of Mechanical and Material Engineering, Washington State University (WSU) may have violated the Ethics in Public Service Act by using state resources for personal gain in support of two outside business ventures. The Executive Ethics Board initiated the complaint on September 14, 2012.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. [Redacted] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. [Redacted] recognizes that the evidence available to the Board staff is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. [Redacted] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge [Redacted] [Redacted] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and

conditions of the agreed order. [Withheld] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and [Withheld] waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [Withheld] understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. Dr. [Withheld] was a Professor, School of Mechanical and Material Engineering at WSU for all times pertinent to this investigation.

2.2. On June 30, 2011, the SAO Investigator logged onto www.wildcountry.info to determine its content and to see if there was evidence on the site to indicate that Dr. [Withheld] was conducting an outside business by selling his environmental photographs. The following evidence was found to support the allegation:

- Many environmental photographs.
- Artist's Statement:

- Don't hesitate to call or e-mail mailto: [Withheld]@wsu.edu. I'm always happy to discuss your needs, and how I can help.
- All photos copyright [Withheld] 509-432-9290, **509-335-7662**. (WSU phone number) No unauthorized use permitted - contact me for terms of use, or read the Artist's Statement/Terms of Use page.

2.3. On July 7, 2011, the SAO took possession of Dr. [Withheld] state-issued laptop, a MacBook Pro. The SAO subsequently conducted a forensic analysis of the computer's hard drive to obtain any evidence to support or refute the allegations. The SAO found an agreement between Dr. [Withheld] and the Pew Charitable Trust (PEW). The agreement grants PEW permission to use all of the images located on the website (www.wildcountry.info) for a fee of \$3,000.

2.4. On March 9, 2012, the SAO investigator contacted Dr. Candis Claiborn, Dean of Engineering and Architecture, WSU. Dr. Claiborn informed the investigator that she felt the website and the photographs had no official relationship to Dr. [Withheld] official position at WSU. She went on to say that the payment for the photographs would not be honorarium related to his position. Dr. Claiborn confirmed her statement made to the SAO to the Ethics Board investigator on October 11, 2012.

2.5. Dr. [Withheld] has presented evidence that the University has long been aware of his work with PEW and other environmental organizations. The work has been encouraged and commended in his annual reviews through his department on an almost annual basis for more than a decade. In addition, the university actively encourages professors to be involved in artistic and civic pursuits outside of the confines of the University, such as with environmental philanthropic organizations like PEW. Dr. [Withheld] work with PEW was included on his CV that is provided to his supervisors on an annual basis and was also included in his evaluation for full professor.

2.6. The Washington State University faculty handbook explicitly allows for the acceptance of honoraria for work in the public interest. However, Dr. [Withheld] noted that there is no WSU official policy or other WSU document that defines a process of accepting honoraria for work in the public interest. The faculty handbook sections that discuss the acceptance of honoraria do not contain any reference to RCW 42.52.10, which states that no state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

2.7. Results of the forensic analysis of Dr. [Withheld] computer also uncovered the following:

Documents:

- Daily News Columns written by Dr. [Withheld] for the Moscow Daily News paper.
- The Pew Charitable Trust Contract to buy the rights to use photographs (\$3,000)

E-Mail (8/12/10 – 6/30/11)

- E-mails from Dr. [Withheld] work laptop submitting the columns to the Moscow Daily News Paper.
- PEW Invoice

2.8. Dr. [Withheld] indicated to investigators that he felt the newspaper columns were work related because faculty members are expected to keep current with global issues and pursue other interest.

2.9. The author of the columns is identified as [Withheld] – Reality Based Lefty. Dr. Claiborn indicated to investigators that she thinks that this moniker, Reality Based Lefty, has a political connotation, which reflects his personal opinions rather than his professional work as a professor of mechanical engineering. Some examples of the titles of articles written by Dr.

[Withheld] the Reality Based Lefty are list below:

- Fathers Day 2011
- The Real Reason We're in Libya

- Lessons on the Global Economy from the Lochsa River
- Walmart Needs to Take Citizenship 101
- Decelerating the Lawlessness
- And We Don't Take Political Prisoner?
- Time To Watch the Surveillance State
- Panda Hunting in Pullman
- Not Just A Crazy Notion

2.10. Dr. [Withheld] told investigators that he does write a bi-weekly column for the Moscow Daily News on his state-issued laptop and that he gets paid by the Moscow Daily News \$25 per column.

2.11. Dr. [Withheld] indicated to investigators that the \$25 per column he was paid is nominal and in line with appropriate honoraria.

2.12. Dr. [Withheld] was not authorized by WSU to receive honoraria specifically for the photographs he sold from his website or columns written for the Moscow Daily Newspaper.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction,

or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from receiving honoraria unless specifically authorized. RCW 42.52.130(1) states:

No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

3.5. Based on Findings of Fact 2.1 through 2.12 [Withheld] received monetary honoraria without proper authorization, or used state resources for his personal benefit.

3.6. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is a mitigating factor that the violation was unintentional in that Dr.

[Withheld] was not aware his actions would violate the Ethics Laws. He believed at the time he was following the policy of the University and the direction of his supervisors when they encouraged him to seek out and support causes that are in the public interest. In addition, he was under the understanding that his department was both knowledgeable and supportive of his work with PEW because of the positive feedback he received through his annual reviews regarding this work and in his evaluation for full professor. Once the State ethics law was brought to his attention, he removed any connection to the university on his website and stopped using state resources to write articles for the newspaper.

Finally, Dr. [Withheld] thought he was within the University policy for accepting honoraria for work in the public interest. The University does allow honoraria for professors who do work in the public interest and actively encourages professors to do work outside of their area of

discipline, so long as it does not interfere with their core duties to the University. Although there is no official University procedure regarding when he may accept an honoraria for such work, Dr [Withheld] will obtain permission from his department head before accepting an honoraria in the future.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of, three thousand dollars (\$3,000.00). The Board agrees to suspend (\$1500.00) on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$1,500 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Withheld hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Withheld

[Redacted Signature]

1/19/13
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 1-22-13

Melanie deLeon Date
Executive Director

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

 ✓ ACCEPTED in its entirety;

 REJECTED in its entirety;

 MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

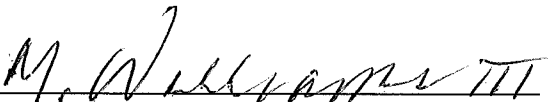
DATED this 8th day of March, 2013



Lisa Marsh, Chair



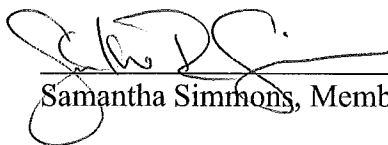
Anna Dudek Ross, Vice-Chair



Matthew Williams, III, Member



Michael Bahn, Member



Samantha Simmons, Member

* I, Withheld accept/do not accept (circle one) the proposed modification(s).

Withheld Respondent Date