

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:




Respondent.


No. 2012-057

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent,  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 September 19, 2012, the Executive Ethics Board (Board) received a referral from the State Auditor's Office (SAO) alleging that  Multimedia Production Technician, University of Washington (UW) - Tacoma, may have violated the Ethics in Public Service Act by using state resources for personal gain. The Board found reasonable cause on March 8, 2013.

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] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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. [REDACTED] was employed by the UW Tacoma Campus as a Multimedia Production Technician for all times pertinent to this investigation.

2.2. As a Multimedia Production Technician, [REDACTED] has access to state owned multimedia equipment to include, cameras, video recorders, tripods and external microphones.

2.3. On April 21, 2011, [REDACTED] entered a 72-Hour film competition presented by the Grand Cinema Theater in Tacoma. The completed films were due back at the Grand Cinema on Sunday, April 24, 2011

2.4. On Thursday April 21, 2011, [REDACTED] contacted the Facilities Department at UW-Tacoma and spoke with Tessa Coleman to obtain permission to use the motorized forklift for the production of the film on Saturday to take place on the UW –Tacoma Campus. Ms. Coleman told Board investigators that she told [REDACTED] that unless the film project was approved by the University, Facilities Services (FS) couldn't help. She went on to say that she told him that if he got any help from anyone in FS that the help would have to be after hours and only on a voluntary basis.

2.5. Robert Hand, a Maintenance Mechanic, at UW-Tacoma volunteered to assist in the film production by operating the motorized lift on Saturday, April 23. There is photographic evidence showing Mr. Hand and [REDACTED] in the motorized lift on the UW-Tacoma Campus.

2.6. During the completion of the short film, [REDACTED] used state issued video recording equipment, (tri-pod, boom microphone) attached to [REDACTED] personal camera. These items are identified with photographic evidence showing UW equipment tag numbers.

2.7. [REDACTED] does not deny that he used UW equipment to complete the short film pertinent to this investigation, but that he did so inadvertently. [REDACTED] explained that he will use some of his personal equipment for university related productions and over time some of his personal equipment has gotten mixed up with the university's equipment. Therefore, when he obtained the tri-pod and boom microphone, he did not think about if he was using his equipment or the university's equipment and inadvertently obtained equipment belonging to the university.

2.6 A portion of the video was completed on the UW-Tacoma campus. The total amount of time using the campus was about two hours.

2.7 BrieAnna Bales, UW-Tacoma Conference Services Division, told Board investigators that any use of the UW-Tacoma Campus for filming should have gone through her office. In the past, they have allowed filming on campus, but for a fee. She checked her records for the time in question and indicated that [REDACTED] had not been scheduled for, or authorized to use, the campus for his personal filming project.

2.8 Ms. Bales indicated that for the two hours the cost would have been \$400.

2.9 On May 6, 2011, [REDACTED] received an award for his film regarding “Best use of Dialogue – what are you going to do about it.” [REDACTED] also received a \$38 gift certificate for pizza and a movie.

2.10 On May 2, 2011, [REDACTED] sent an email to all UW-Tacoma staff and faculty informing them that he had some extra tickets to the Grand Cinema’s 72-Hour film competition viewing party to be held at the Rialto Theater. The email went on to say, “Come down to have a great time and support our local artists – including Team [REDACTED] entry.”

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 his or her position with the state to secure a special privilege. RCW 42.52.070(1) states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure

special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.4. Based on Findings of Fact 2.6 through 2.9, [REDACTED] received a special privilege for his private benefit or gain.

3.5. 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.

3.6. Based on Findings of Fact 2.1 through 2.10, [REDACTED] used state resources for his personal benefit.

3.7. 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.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Paul Lovelady will pay a civil penalty in the amount of, four thousand, dollars (\$4,000.00). The Board agrees to suspend one thousand dollars (\$1000) on the condition that [REDACTED] 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 \$3,000 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, [REDACTED] 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.

[REDACTED]

5/25/13
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 5/28/13

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 12th day of July, 2013

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams III
Matthew Williams, III, Member

Samantha Simmons
Samantha Simmons, Member

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

 Respondent Date