

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2015-040

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On May 21, 2015, the Executive Ethics Board (Board) received an email from ██████████ indicating that he may have inadvertently violated the Ethics Act when his campaign to elect him to the Ellensburg City Council Position #7 sent an email to some Central Washington University (CWU) staff and faculty. He was contacted by the CWU Ethics Advisor informing him that using state resources to support his political campaign was an ethics violation. He wanted to report the violation to the Ethics Board.

2. Prior to June 2012, ██████████ was a student at CWU. In June of 2012 he was hired by CWU as a lecturer. From January 2013 through January 2016, ██████████ provided class instruction at

CWU for courses related to Information Technology and Administrative Management and taught courses in Human Sexuality. [REDACTED] was a lecturer for CWU for all times pertinent to this investigation.

3. [REDACTED] informed Board staff that on May 18, 2015 an email was sent from his campaign office to some email addresses ending in cwu.edu. On the same day [REDACTED] received an email from one of the recipients indicating that they wanted to be removed from the email list.

4. On May 20, 2015, [REDACTED] received an email from the CWU Ethics Adviser informing him that that using state resources to support his political campaign was an ethics violation.

5. [REDACTED] offered the following explanation to Board staff for the violation:

a. As a candidate I had not done my homework in learning that sending emails to a cwu.edu address was an ethics violation. I had run a previous campaign in 2013 and always ensured that I did not do any campaigning while on university time, property, or using any university property.

b. The moment I was asked to remove an email address from the mailing list it was done.

c. The moment I was notified that this was an ethics violation I accepted the wrong doing and for ensuring it does not happen again

6. In a subsequent conversation with Board staff, [REDACTED] stated that he sent the email from his personal computer while he was at his home. He further indicated that the cwu.edu addresses were obtained by him during the time he was a student at CWU prior to June 2012 and that any violation of the Ethics Act was inadvertent.

7. On June 4, 2015, Board staff notified CWU of their investigation and requested a forensic copy (bit-by-bit image) of [REDACTED] work computer, 24 months of work emails, and cell phone data, if [REDACTED] had an assigned a state phone

8. Board staff obtained a copy of the hard drives of two work computers assigned to Mr. [REDACTED] on June 15, 2015. Both copies were placed on one 500 GB hard drive and identified as computer 1 (laptop) and computer 2 (desktop).

9. On March 11, 2016, data on the copied hard drive was analyzed using Internet Evidence Finder v6 (IEF) software.

10. Board staff's review of [REDACTED] hard drives identified documents and activity supporting his 2013 Campaign for the Ellensburg City Council Position # 3; documents supporting his outside business, Pathway Communications, LLC; and that he used state resources for other personal activities, e.g., Kittitas County SeaHawkers (KCHawkers) and Relay for Life.

11. [REDACTED] told Board staff that he uses Google Drive, a cloud based storage system that allows information to be synced to multiple devices. [REDACTED] stated that he owns an Apple-MacBook Air laptop, iPhone and iPad and all these personal devices were synced with his two CWU work computers using his personal Google Drive account. [REDACTED] told Board staff that any campaign documents found on his CWU computer hard drive were placed there because of the syncing process. He further indicated that he never used a state computer to create or modify any of the documents found. [REDACTED] further stated that he personally paid for the cost of the Google Drive account.

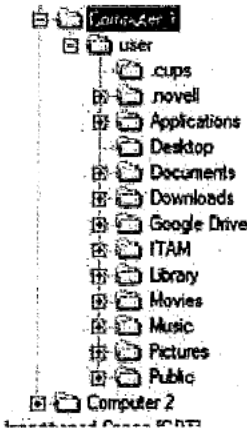
12. [REDACTED] told Board staff that any documents found on his CWU computer hard drive related to his outside business, Pathways Communication, were there because of the syncing process. He also indicated that he never used a state computer to conduct work related to his business.

13. [REDACTED] provided the same reasoning for all of the other personal files found on his work computer located in the Google Drive folder.

13. [REDACTED] provided the same reasoning for all of the other personal files found on his work computer located in the Google Drive folder.

14. The following was found during the Board staff's examination of [REDACTED] computer 1 (laptop):

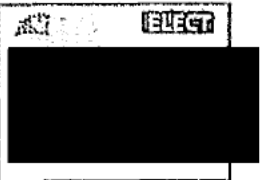




Computer 1 (laptop)



(Google Drive/Council Race)

2013 campaign: flyers, posters, banners, buttons

Title	Type	Date/Time Last Modified	Last modified by	Image
8_10.pdf (Election Flyer)	pdf	8/12/13 at 8:21 am		[REDACTED]
8_10_New.pdf	pdf	8/29/13 at 7:54 am		[REDACTED]
11_14.pdf	pdf	8/12/13 at 8:18 am		[REDACTED]

11_14_NEW.pdf	pdf	8/29/13 at 7:54 am		
fbook page banner!.jpg	jpg	8/12/13 at 2:44 pm		
Banner_4 ft.pdf	pdf	8/29/13 at 8:14 am		
Campaign button photo for website	jpg	8/20/13 at 5:11 pm		
██████████ City Invite.pdf	.pdf	10/6/13 at 6:40 pm		

2013 campaign: documents

Title	Type	Author	Date/Time Last Modified	Last modified by	Printed Date/Time
Council Bus. Card Template(front)	Word	██████████	5/19/13 at 7:58 pm	██████████	5/19/13 at 7:57 pm
Council Bus. Card Template(back)	Word	██████████	2/20/13 at 12:24 am	██████████	5/19/13 at 8:09 pm
Campaign Flyer	Word	██████████	6/20/13 at 8:45 pm	██████████ Douglas	6/20/13 at 2:55 pm
Daily Record Responses	Word	██████████	10/9/13 at 9:10 pm	██████████	N/A
██████████/erickson	Word	██████████	10/21/13 at 8:00 pm	██████████	N/A
Self-photo graduation for campaign	Word	██████████	9/15/13 at 10:49 am	██████████	9/14/13 at 8:36 pm
Speech for event	PDF	unknown	9/26/13 at 7:49 am	unknown	unknown
Primary results	Excel	██████████	10/6/13 at	██████████	N/A

			11:18 am		
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In addition to the documents shown above, two folders containing campaign videos were found and identified as: 1) "Campaign Video 1.coproj." which contained 44 files and 38 folders, 42.7 MB of data; and 2) identified as Video for Campaign.cmproj, which contained 7 files and 4 folders, 266 MB of Data.

Outside Business

(Google Drive/ Communication Pathways, LLC)

Communication Pathways, LLC. (40 files), 76.9 MB of Data

Title	Type	Author	Date/Time Last Modified	Last modified by	Printed Date/Time
Brochure Mar 2013	Word	User	3/1/13 at 9:40 pm	User	3/1/13 at 9:33 pm
City of Ellensburg Proposal(1) Invoice	Word		11/11/13 at 6:36 pm		11/11/13 at 5:36 pm
City of Ellensburg Proposal Invoice	Word		2/13/13 at 3:31 pm		2/13/13 at 3:31 pm
Communications Seminar Mar13	Word		2/5/13 at 12:57 pm	User	10/22/12 at 8:30 am
Communications Seminar (33 slides)	Power Point	OS X User	1/28/14 at 3:21 pm	User	N/A
Communications Seminar 2012	Word		10/22/12 at 11:40 am		10/22/12 at 8:30 am
Communications Seminar December 2012	Word		11/14/12 at 11:41 am		10/22/12 at 8:30 am
Conflict Management for Couples	Word		5/20/14 at 6:46 pm		N/A
CWU proposal	Word	unknown	9/26/13 at		2/13/13 at

bohman Invoice			7:49 am		4:29 pm
Wingars Invoice	Word	Unknown	5/6/15 at 12:23 pm		5/6/15 at 12:12 pm

In addition to the documents shown above, Board staff located a folder identified as “Letters to save treatment.” The folder contained three letters written to Senator Janea Holmquist Newbry and Representatives Matt Manweller and Judy Warnick. The letters were dated March 5, 2014. The letters urge the Senator and Representatives to take action in preserving the chemical dependency treatment in the state.

Facebook visits regarding [REDACTED] outside employment:

- a. Facebook login – communicationspathways – 9/15/11 at 3:34 pm.
- b. Looking at Facebook page – Grace Recovery Centers – 4/20/15 at 9:51:01 pm.
- c. Looking at Facebook page – Lakeside-Milum Recovery Center 4/20/15 at 9:51:23 pm.
- d. Looking at Facebook page – CommPathLLC – 5/27/15 at 11:32 am.

Personal Use (examples of)

- a. Google Drive Folders
 - i. Chemical Dependency, Folder
 1. Contains 117 files, 42 folders. 135 MB of Data.
 2. 6/10/10 through 8/21/12
 - ii. Anonymous People (1), Folder
 1. Contains 12 files, 30.9 MB of Data.
 2. 1/1/14 through 2/17/14.
 - iii. Anonymous People (2), Folder
 1. Contains 11 files, 33.5 MB of Data.
 2. 11/11/13 through 2/3/14
 - iv. Anthony, Folder
 1. Contains 22files, 2.88 MB of Data.
 2. 1/20/14 through 5/7/14
 - v. Auto_Motorcycle Folder
 1. Contains 2 files, 300 KB of Data.
 2. 4/3/13 and 5/8/13
 - vi. Capella, Folder
 1. Contains 13 files, 1 folder, 7.95 MB of Data.
 2. 3/30/14 through 5/1/14.
 - vii. Masters, three Folders
 1. 2013 -- Containing 2,364 Files and 435 Folders, 6.41 GB of data. Most of the files were of personal photographs.
 2. 2014 -- Containing 4,509 Files and 974 Folders, 18.3 GB of data. Most of the files were of personal photographs.

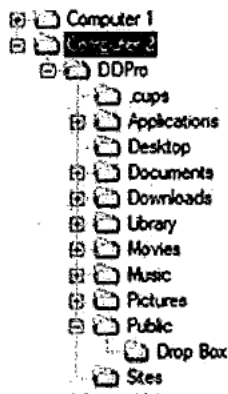
3. 2015 -- Containing 3,028 Files and 802 Folders, 39.7 GB of data. Most of the files were of personal photographs.
- b. KC Hawkers/ Google Drive
 - i. 12th Man!.comproj, 5 files, 3 folders, 3/24/14 at 11:14 am, 40 KB of Data.
 - ii. Eburg12thmanbluefriday.cmproj, 12 files, 11 folders, 2/1/15 at 12:42 pm, 6.85 GB of Data.
 - iii. NFC Championship Game.cmproj, 180 files, 1/29/15, 176 folders, 1.87 GB of Data.
 - iv. KC 12 Represents-Seahawks, 4 files, 1/25/15 at 1:19 pm, 8.61 MB of Data.
 - v. 34 videos related to the Seahawks, 1/26/15 through 3/11/16, 6.1 GB of Data.
 - vi. 23 PDF documents, 7/3/13 through 3/11/16.
 - vii. 2 Excel documents, 11/4/13 and 5/5/15.
 - viii. 12th Man!.mp4, Video file, 1/6/15, 3,932 KB of Data.
 - ix. Better_seahawks_anthem, audio file, 12/13/13, 6,102 KB of Data.
 - c. Relay for Life/Google Drive
 - i. 20 word documents, 11/12/13 through 9/10/14
 - ii. 4 PDF documents, 5/6/14 through 9/10/ 14.
 - iii. 1 Excel document, 9/10/14.
 - d. Personal Internet Use
 - i. Amazon.com (4/6/15 through 6/3/15)
 1. 6/3/15 at 12:23 pm
 2. 5/18/15 at 1:11 pm
 3. 5/11/15 at 11:27 am
 4. 4/6/15 11:59 am
 5. 4/15/15 11:20 am
 - ii. Craigslist (4/27/15 through 9/12/15)
 1. 9/12/15 at 3:28 pm
 2. 4/23/15 at 11:04 pm.
 3. 4/20/15 at 10:34 pm
 - iii. eBay
 1. 5/22/14 at 9:37 pm
 - iv. Facebook
 1. 648 records of Facebook Activity (8/30/11 through 6/3/15).
 2. 322 Facebook Home Page (4/6/16 through 6/3/15).
 3. 299 Looking at pages (10/24/13 through 6/3/15).
 4. 27 apparent work related (8/30/11 through 6/3/15).
 5. 3 records of visit to DouglasForeburgCouncil (5/16/15 through 5/31/15)
 6. 2 Facebook visits to Communications Pathway, 9/15/11 and 5/27/15.
 7. 3 Facebook visits to recovery and addiction centers on 4/20/15.
 - v. Godaddy.com, internet site, "douglasforeburgcouncil" created 8/8/13. Chrome login sites.
 - vi. Godaddy.com/website-builder, 5/29/15.
 - vii. TicketMaster.com, Seattle Seahawk, 6/3/15 at 12:36 pm.
 - e. Personal emails
 - i. Relay for life -- 305 emails, 2/9/13 through 8/21/14.
 - ii. Seahawks -- 40 emails, 10/18/12 through 1/21/15

15. [REDACTED] told Board staff that the chemical dependency documents were related to his time as a student. He placed the files into his Google Drive folder and during the syncing process they were copied onto his CWU work computers.

16. [REDACTED] told Board staff that iii. and iv. in the KC Hawkers folder above were used to create a presentation for an approved CWU rally to support the Seahawks.

17. Board staff reviewed [REDACTED] computer 2 (desktop) hard drive for documents, internet history, and emails related to political and other non-work related activities. Some example of what was found is shown below:

Computer 2 (Desktop)



- a. Facebook (724 records 8/30/11 through 6/3/15)
- b. Seahawks 53 records (4/6/15 through 6/3/15)
- c. [REDACTED]ForEburgCouncil, 3 visits (5/16/15 through 5/31/15)
- d. Gmail (292 records 5/20/15 through 6/5/15)
- e. Seahawk Videos (17 videos, 1.6 GB of data)
- f. 23 pages of PDF images of Ellensburg City Council meeting minutes (1/5/15 through 6/1/15).
- g. Audio file (Ep1.5 wav), radio presentation by [REDACTED] of his bi-weekly radio show, "Recovery is not a four letter word." The date this file was last modified is March 3, 2015 at 7:55 pm. The length of time is 56 minutes and 50 seconds and used 573 MB of storage space on [REDACTED]s work computer 2. Path – Computer 2\Documents.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit by storing personal document, photographs and videos on his state computer in violation of RCW 42.52.160.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for political campaigns. RCW 42.52.180(1) states:

1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

4. Based on the stipulated facts above, [REDACTED] used state computer resources to store political document, photographs, and other images related to his 2013 political campaign for Ellensburg City Council Position # 3 in violation of RCW 42.52.180.

5. Based on the stipulated facts above, [REDACTED] used the state email system to inform and elicit support from other state employees for his 2015 political campaign for Ellensburg City Council Position #7 in violation of RCW 42.52.180.

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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that these types of violations significantly reduce the public respect and confidence in state government employees. In the matter at hand, it is a mitigating factor that once [REDACTED] was made aware of the possible violation he took immediate action to correct his actions by removing all of contacts with state email address from his contact list and by self-reporting to Executive Ethics Board staff.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can 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.
3. 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.
4. [REDACTED] agrees that if any or all of the alleged violations were proven 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).

5. [REDACTED] further agrees that the evidence available to the Board 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. [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.

8. If the Board accepts this stipulation, it 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. No other claims of alleged violations are pending against [REDACTED] at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. 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 before the

Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two-thousand, five-hundred dollars (\$2,500) for the violations associated with RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) 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.

12. The civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.

[REDACTED]

Respondent

3/6/17
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

3/7/17
Date

II. ORDER

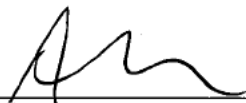
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

ACCEPTED in its entirety;

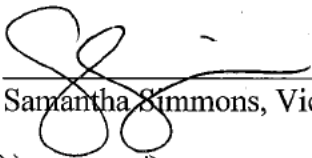
REJECTED in its entirety;

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


DATED this 24th day of March, 2017



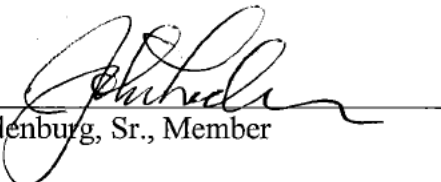
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member

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

[REDACTED], Respondent Date _____