

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-014

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 January 13, 2016, the Executive Ethics Board (Board) received a complaint referred by Western Washington University (WWU) alleging that ██████████), Assistant Director of the Spatial Institute, Huxley College at WWU, may have violated the Ethics in Public Service Act by using state resources for his personal benefit. The complaint alleged that he used computer resources to support his outside business, instructing ArcGIS Training through a non-profit entity called Northwest Environmental Training Center (NWETC), and for his private personal benefit.

The complaint further alleged that [REDACTED] provided a special privilege to NWETC by renting a classroom at a reduced rate not available to others.

2. [REDACTED] has worked for WWU since August 2003 as a Geographical Information Specialist/ Instructor and was so employed for all times pertinent to this investigation.

3. On September 25, 2015, WWU Office of Internal Audit was advised that [REDACTED] was using state resources and receiving compensation to teach GIS courses in the WWU computer lab for an outside nonprofit entity.

4. WWU obtained the computer hard drives of [REDACTED] former and current computers. The WWU audit identified the following information relating to outside-compensated employment:

- 4,974 files using 4,196 MB of disk space on [REDACTED] devices related to his outside-compensated activities.
- 62 emails using 2 MB of disk space related to his outside-compensated activities.
- 73 documents related to [REDACTED] outside-compensated activities that were modified during normal working hours of 8:00 am to 5:00 pm on dates when Mr. [REDACTED] had not submitted any type of leave request.
- Several emails and documents were located relating to [REDACTED] outside-compensated workshops indicating he was using the WWU servers to store documents related to his outside employment.

5. The WWU audit identified the following information relating to [REDACTED] other personal use:

- 1,578 Audio books and podcast using 18,933 MB of disk space.

- 4,042 music files using 19,897 MB of disk space.
- 137 full length Hollywood style movies using 39,100 MB of disk space.
- 10,904 personal pictures and images using 4,432 MB of disk space.
- 117 short personal videos using 2,488 MB of disk space.
- 501 personal documents using 168 B of disk space.
- 23 personal audio files using 33 MB of disk space.
- One video game with 202 associated files using 11,000 MB of disk space.

6. The WWU audit identified a personal folder, "sf," containing 4,233 files and 8,189 MB of disk space. This folder contained personal GIS projects. ██████████ told WWU auditors that most of the projects were personal and did not produce revenue for the college. ██████████ maintained the project did ultimately benefit WWU because each project provided him the opportunity to improve his GIS skills. Some of the personal projects identified by ██████████ are:

- The creation of a map for a friends wedding. Work on this map spanned a period of five workdays.
- A number of files related to home remodeling project.
- GPS mapping of the San Juan Islands during a sailing trip.
- Cartographic maps to donate to a fundraiser at a local nonprofit.
- Miscellaneous projects for friends and family.

7. On January 27, 2014, WWU set a cost for a computer lab rental at \$500 per day. This new fee agreement did not provide any allowance to reduce the fee amount for extenuating circumstances, i.e., low attendance.

8. On February 5, 2014, [REDACTED] sent an email to several co-workers, including the Director of the Spatial Institute indicating that he had reserved the computer lab for June 16-18 for use by the NWETC for a GIS work shop. He further indicated in the email that if the workshop drew enough attendees, the 3-day workshop should put \$1,500 into the GIS Services account. This email indicated that [REDACTED] understood the daily rental fee for the lab was \$500 per day.

9. [REDACTED] received a fee by NWETC to instruct the GIS courses at WWU and had a financial interest in the course.

10. On June 6, 2014, [REDACTED] sent an email to WWU Contract Services indicating the rental fee should be reduced to \$1,000 from the established \$1,500 due to low attendance. [REDACTED] indicated in his response to the WWU Auditor that he had an informal discussion with Michael Medler, Director of the Spatial Institute, and came to a mutual agreement that due to the low enrollment in the course, lowering the rental fee to \$1,000 would be better than canceling the course altogether.

11. [REDACTED] indicated that just because the rental fee was set at \$500 per day he did not feel WWU had to charge the full amount. He also indicated an understanding that he had stake in the class being taught and understood that his involvement in reducing the cost and participating in the contract was a conflict of interest.

12. WWU Policy U5352.01 states, in pertinent part, “[d]epartments that waive or discount fees must have a written policy describing each type of waiver or discount and approval required” Mr. [REDACTED] indicated in a response to the WWU Auditor that there was no policy and that the decision to reduce the fee was made very informally.

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B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, [REDACTED] conducted activities incompatible with his public duty by entering into a contract between WWU and NWETC to provide computer lab space to teach a GIS class where he was paid by NWETC, in violation of RCW42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having a Financial interests in a transaction. RCW 42.52.030 states in part:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

4. Based on the stipulated facts above, [REDACTED] entered into a contract between WWU and NWETC in which he had a personal financial interest, in violation of RCW42.52.030.

5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 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.

6. Based on the stipulated facts above, [REDACTED] used his position as Assistance Director of the Spatial Institute to secure a special privilege for NWETC, in violation of RCW 42.52.070.

7. 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.

8. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160.

9. 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.

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 six-thousand, dollars (\$6,000) for the violations associated with RCW 42.52. The Board agrees to suspend three-thousand, dollars (\$3,000) 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 three-thousand dollars (\$3,000) 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] _____
4/1/16
Date
Respondent

Presented by:

K. Reynolds _____
KATE REYNOLDS
Executive Director
4/12/16
Date


II. ORDER

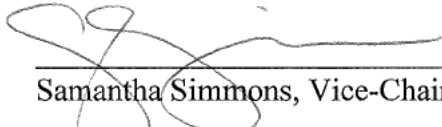
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is


- 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 13th day of May, 2016


_____ Anna Dudek Ross, Chair


_____ Samantha Simmons, Vice-Chair


_____ Lisa Marsh, Member


_____ Sumeer Singla, Member


_____ John Ladenburg, Sr., Member

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

_____, Respondent Date