

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-092

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 December 14, 2016, the Executive Ethics Board (Board) received an anonymous complaint alleging that ██████████, State Bridge Design Engineer for the Washington State Department of Transportation (WSDOT), may have violated the Ethics in Public Service Act by using state resources for his personal benefit and gain in support of his outside employment as an adjunct faculty member at St. Martin's University (SMU).
2. ██████████ is a State Bridge Design Engineer that has worked for WSDOT since 2006 and was in that position for all times pertinent to this investigation.
3. The complaint alleges that ██████████ was using his state computer in support of his outside job as an adjunct faculty member at Saint Martin's University.

4. Board staff reviewed [REDACTED] folder located on the WSDOT H Drive. A review of that folder revealed documents and PowerPoint presentations that [REDACTED] worked on during the time he was being paid by WSDOT. Three folders were located on the H drive identified as SMU 2014 Bridge Class; 2015 SMU EQ Engineering; and 2015 SMU EQ Class. Some examples of the documents found in each folder is shown below:

1) **SMU 2014 Bridge Class**: Contains 74 files and 20 folders.

2012 SMU Bridge Class: 15 files, 4 folders

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2012 Bridge Homeworks	PowerPoint	[REDACTED]	9/16/12@10:27 am	[REDACTED] WSDOT	
2012 SMU Bridge Eng Syllabus	Word	[REDACTED]	9/14/12@11:08 am	[REDACTED] WSDOT	8/20/12 @10:26 am
MCE 575 Bridge & Earthquake Engineering	Word	[REDACTED]	2/13/14 @ 5:14 pm	[REDACTED] WSDOT	Never
LRFD Bridge Design Specs -2012.	PDF	AASHTO	3/27/12 @ 3:08 pm		
NHI SteelSuperStructures	PDF	FHWA	5/31/12@ 4:01 pm		

SMU Bridge Class 1-Intro-TS&L: 3 files

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
LRFD Table of Contents	Word	[REDACTED]	9/11/12 @ 1:38 pm	[REDACTED]	
2012 SMU Bridge Class 1 – Specs & TSL - Final	PowerPoint	[REDACTED]	9/5/12 @2:30 pm	[REDACTED]	Never
2012 Bridge Design Class 1	PDF	[REDACTED]	9/16/12 @ 10:51 am		

SMU Bridge Class 2-Intro-TS&L: 2 files

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2012 Bridge Class 2 Homework	PowerPoint	[REDACTED]	9/16/12 @ 10:47 am	[REDACTED]	
2012 Bridge Class 2 Homework	PDF	[REDACTED]	9/16/12 @10:48 am		

In addition to the three folders above, there were ten additional folders all containing documents to support [REDACTED] position at SMU for the 2012 Bridge Class.

2) **2015 – SMU – EQ Engineering:** Contains 138 files and 15 folders

Some examples of documents found in the 2015 – SMU – EQ Engineering folder:

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2013 SMU EQ Class 1 lecture	Word	[REDACTED]	8/26/13 @ 2:15 pm	[REDACTED]	2/1/12 @ 12:09 pm
2013 SMU EQ Class 2 lecture	Word	[REDACTED]	9/4/13 @10:19 am	[REDACTED]	2/1/12 @ 1:00 pm
2013 SMU EQ Class 3 lecture	Word	[REDACTED]	9/16/13 @ 10:27 am	[REDACTED]	9/16/13 @ 9:05 am
2013 SMU EQ Class 13 lecture	Word	[REDACTED]	11/25/13 @ 3:25	[REDACTED]	11/25/13 @ 3:24 pm
Retaining Wall Homework	Word	[REDACTED]	4/8/12 @ 11:32 am	[REDACTED]	3/31/11

2015- SMU-EQ Exams & HW: 19 files

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2013 SMU EQ – HW#1 Solutions	Excel	[REDACTED]	11/29/13 @ 1:22 pm	[REDACTED]	11/26/13 @ 5:59 pm
2013 SMU EQ Final exam Problems	Word	[REDACTED]	12/5/13 @8:07 am	[REDACTED]	2/16/10 @ 12:36 pm
2013 SMU EQ Homework Summary	Word	[REDACTED]	11/25/13 @ 3:54 pm	[REDACTED]	
2013 SMU EQ Class – Mid-terms	Excel	[REDACTED]	11/29/13 @ 1:17 pm	[REDACTED]	11/29/13 @ 1:09 pm
SMU 2013 HW	PowerPoint	[REDACTED]	11/29/13 @ 11:31 am	[REDACTED]	

Additional Folders:

SMU Bridge Class 6 – EQ: 4 files

EQ Eng – Youssef Bozorgnia: 30 PDF files

SMU EQ Class 1 through SMU EQ Class 13: 32 files

- 3) **2015 SMU EQ Class:** Contains 252 file and 17 folders.

2012 SMU EQL: 21 files

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2012 Bridge Design Class 1	Word		9/11/12 @ 2:01 pm		9/10/12 @ 6:58 pm
2012 Bridge Design Class 2-LL and LL Dist-Lecture	Word		9/14/12 @12:55 pm		9/14/12 @ 10:48 am
2012 SMU EQ Class 4HW3 -Midterm	Word		2/16/12 @ 3:13 pm		2/15/12 @ 12:14 pm
2012 SMU EQ Class 9 Lecture	Word		10/31/13 @ 1:37 pm		10/31/13 @ 1:32 pm

2013 SMU EQ: 27 files

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2013 SMU EQ Bridge Class 11	PowerPoint (170 slides)		11/7/13 @ 3:00 pm		11/7/13 @ 2:48 pm
2013 SMU EQ Bridge Class 12	PowerPoint (117)		11/18/13 @ 3:33 pm		11/18/13 @ 3:33 pm

In addition to the two PowerPoint presentations above, the folder contained 25 PDF files related to class lectures and homework assignments

SMU 2015 PS Concrete: 200 files, 14 folders

Title	Type	Author	Date/Time Last Modified	Last modified by	Last Printed
2015 PS Concrete – Class 1 Introduction	Word	████████	4/27/15 @ 5:47 pm	████████	1/27/13 @ 11:38 pm
2015 PS Concrete – Class 2 Materials	Word	████████	3/17/15 @ 4:48 pm	████████	1/31/13 @ 5:38 pm
2015 PS Concrete – Class 2 Homeworks	Word	████████	4/24/15 @ 4:29 pm	████████	3/27/15 @ 4:26 pm
SMU –CE Fall 2015 Class Schedule-1	Excel	████████	3/19/15 @ 526 pm	████████	3/19/15 @ 5:26 pm
SMU 2015	PowerPoint	████████	5/5/15 @ 1:28 pm	████████	

2013 PS Concrete: 16 files

2015 SMU PS Concrete Grades-HW-Exams: 69 files and 9 folders

PS Class-Supporting Documents: 31 files

SMU PS Nawy: 13 files

SMU – CD: 16 files

The documents shown above represent a small amount of the total SMU related documents found in ██████████ H Drive folder.

5. Board staff reviewed 11,345 Outlook emails sent/received by ██████████ on his computer. Forty-seven emails were found related to SMU for the period of July 4, 2015 through March 20, 2016. Most were related to SMU student communications regarding homework, exams, and grades.

6. ██████████ indicated in his response to Board staff that he is an adjunct faculty member at SMU and that he teaches one class per semester and at times just one class per year.

7. ██████████ indicated in his response that because of the encouragement he received from WSDOT he has always viewed teaching at SMU as a component of his employment.

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. WAC 292-110-010 Use of state resources, prior to April 1, 2016, states, in part:

.....

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in support of his outside employment in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, they were continuing in nature and [REDACTED] was in a position of management within WSDOT.

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.

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 four-thousand five-hundred dollars (\$4,500). The Board agrees to suspend two-thousand dollars (\$2,000) 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 two-thousand five-hundred dollars (\$2,500) 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] 7/18/2017
Date
Respondent

Presented by:

K. Reynolds 7/21/17
KATE REYNOLDS Date
Executive Director

III. 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 September 2017

Anna Dudek Ross
Anna Dudek Ross, Chair

Samantha Simmons
Samantha Simmons, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

Shirley Battan
Shirley Battan, Member

John Ladenburg
John Ladenburg, Member

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

_____, Respondent Date