

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2017-048

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], 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 August 25, 2017, the Executive Ethics Board (Board) received a complaint referred by Seattle Central College (SCC) following an internal investigation. The complaint alleged that [REDACTED], former Port Engineer with the Seattle Maritime Academy (SMA), may have violated the Ethics in Public Service Act by using state resources for personal benefit or gain and by providing himself a special privilege.

2. [REDACTED] had served as the Port Engineer for SMA since March 2016. For all times pertinent to this investigation, he was so employed.

3. On July 16, the Seattle Fire Department (SFD) responded to SMA, following a report of smoke near the SMA pier. Upon arrival, it was determined that one of the pier support pilings had caught

fire. After extinguishing the fire, SFD cut and removed an approximately 1-foot section from the top portion of the burned piling. SFD left the removed section of piling on the adjacent SMA dock.

4. The following day, Sarah Scherer (Ms. Scherer), Director of SMA, observed the burned/removed section of piling on the dock and began making inquiries with staff. After further investigation and eventual contact with SFD by SMA Port Captain Erik Davis (Mr. Davis), the school learned of the fire that had occurred the day before.

5. SMA's campus is equipped with video surveillance. Upon review, the video showed that [REDACTED] had entered the locked campus on July 16<sup>th</sup> with two friends. [REDACTED] personal boat (approximately 12 ft.) was already tied to SMA's pier/dock. While on the dock, one of [REDACTED]. [REDACTED] companions used the top of the piling to extinguish a cigarette. [REDACTED] and his companions then left in his boat. Approximately twenty minutes later, smoke is seen coming from the piling.

6. Both Mr. Davis and Ms. Scherer viewed the video of the incident. [REDACTED] and his companions were also observed in the video returning to the pier in his boat. [REDACTED] is seen stopping to inspect the burned piece of piling. He and his companions left campus on foot, leaving his boat tied to the dock.

7. Mr. Davis told Board staff that it was clear from watching the video that prior to the fire, that the boat had been tied to the dock at least overnight.

8. Board staff also spoke with [REDACTED] immediate supervisor, Ms. Scherer. During an interview with Board staff, Ms. Scherer<sup>1</sup> acknowledged that she was aware that [REDACTED] was using the SMA facility to store his personal boat on occasion and launch it from SMA's

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<sup>1</sup> [REDACTED] - EEB Case 2017-049

dock. She said she should have ensured that he stopped. She was not sure exactly when he began using the facility to store his boat or launch it from the pier.

9. Ms. Scherer told Board staff that during her initial inquiries the day after the incident, she spoke with [REDACTED] about it. He denied having any knowledge of the burned piling. Ms. Scherer stated that although it may have been possible at the time that he did not know how the fire had occurred, he did not offer any information about having been on campus with friends and having inspected the burned piece on his return to the dock. It was not until the video was viewed that school officials learned of [REDACTED] actions.

10. Ms. Scherer told Board staff that shortly before the fire occurred, she became aware that [REDACTED] was bringing friends onto the SMA campus after hours. She was concerned about the liability issues and during the week of July 10, 2017, she addressed it with him. She said she specifically instructed him not to have any unauthorized /unapproved people on the SMA campus and not to come on campus for personal reasons after business hours. She said [REDACTED] acknowledged that he understood her directive by saying "okay."

11. Mr. Davis told Board staff that he believed it was October, when he first observed the boat and trailer on the campus and learned it belonged to [REDACTED]. Mr. Davis said once things settled down on campus he had a conversation with [REDACTED] about having his personal boat on campus.

12. Mr. Davis said he told [REDACTED] it was not allowed and he would need to remove it. [REDACTED] told him he had been doing some work on the boat but agreed to move it off the property. Mr. Davis said [REDACTED] removed the boat/trailer from campus, because he did not see it for a while. Eventually, [REDACTED] brought the boat/trailer back and left it on campus on occasion [REDACTED] would use the boat to set and retrieve a crab pot. Mr. Davis said he and [REDACTED] have different but parallel duties and he is not his supervisor.

13. Mr. Davis said after reviewing the video of the fire incident, it was clear the boat was tied to the pier overnight.

14. [REDACTED] was terminated in August 2017, following the internal investigation conducted by SCC.

## B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts above, [REDACTED] used his position as Port Engineer to secure a special privilege for himself when he stored his personal boat on Seattle Maritime Academy (SMA) property and would launch his boat from the SMA pier in violation of RCW 42.52.070.

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.

4. Based on the stipulated facts above, [REDACTED] stored his boat on SMA property in violation of RCW 42.52.160.

5. 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 these types of violations significantly reduce the public respect and confidence in state government employees.

In the matter at hand, it is an mitigating factor that as a result of his actions, [REDACTED] was terminated from employment with the Seattle Maritime Academy.

### 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 one-thousand, seven-hundred and fifty dollars (\$1,750) for violation associated with RCW 42.52.

12. The civil penalty in the amount of one-thousand, seven-hundred and fifty dollars (\$1,750) 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

5/23/2019

Date

Presented by:

L. Reynolds  
KATE REYNOLDS  
Executive Director

6/18/19  
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;

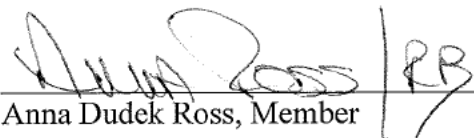
\_\_\_\_\_ MODIFIED. This stipulation will become the order of the Board if the Respondent approves\* the following modification(s):

\_\_\_\_\_  
\_\_\_\_\_  
DATED this 12<sup>th</sup> day of July, 2019

  
\_\_\_\_\_  
Shirley Battan, Chair

  
\_\_\_\_\_  
Gerri Davis, Vice Chair

  
\_\_\_\_\_  
Lisa Marsh, Member

  
\_\_\_\_\_  
Anna Dudek Ross, Member

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

[REDACTED], Respondent \_\_\_\_\_ Date \_\_\_\_\_