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7 **BEFORE THE WASHINGTON STATE**
8 **EXECUTIVE ETHICS BOARD**

9 In the matter of:

10 MIKE ANDREW,

11 Respondent.

OAH NO. 06-2021-AGO-00042

EEB NO. 2020-039

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER

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14 **I. PROCEDURAL HISTORY**

15 1.1 On or about June 18, 2020, the Executive Ethics Board (Board) received a referral
16 from Edmonds Community College (ECC) alleging that Mike Andrew (Mr. Andrew) and
17 Steven Hailey (Mr. Hailey),¹ ECC faculty members, may have violated RCW 42.52, the Ethics
18 in Public Service Act, by utilizing state resources to promote and support their outside business,
19 SP Enterprises LLC/Cyber Security Academy (Hailey Enterprises).

20 1.2 On January 8, 2021, the Board found reasonable cause to believe that a violation
21 of RCW 42.52 was committed, as set forth in the Investigative Report and Board Reasonable
22 Cause Determination (Reasonable Cause Determination).

23 1.3 After due and proper notice, a hearing was held on Board Staff's motion for
24 summary judgment, convening on January 14, 2022, and conducted via Zoom. ALJ Jason Kinn
25

26 ¹ Mr. Hailey is the subject of Case No. 2020-040. A Final Order was entered in that matter on January 5, 2022.

1 from the Office of Administrative Hearings conducted the proceedings, and Board Chair
2 Shirley Battan, and members Gerri Davis and Jan Jutte were present. Also present was Leo
3 Roinila, Assistant Attorney General, legal advisor to the Board.

4 1.4 Chad C. Standifer, Assistant Attorney General for Board Staff, was present. The
5 Board's Executive Director, Kate Reynolds, and other Board Staff members were present.

6 1.5 Mr. Andrew did not appear at the hearing.

7 1.6 Board Staff filed the following documents:

- 8 • Board Staff's Motion for Summary Judgment; and
- 9 • Declaration of David Killeen in Support of Motion for Summary Judgment, with
attached Exhibits 1-21.

10 1.7 Mr. Andrew did not file a response to Board Staff's Motion for Summary
11 Judgment.

12 1.8 The proceedings were recorded and open to the public.

13 1.9 The hearing was adjourned on January 14, 2022.

14 Based on the evidence presented, the Board enters the following Findings of Fact,
15 Conclusions of Law, and Final Order:

16 II. FINDINGS OF FACT

17 2.1 Mr. Andrew was a full-time faculty member in the Computer Information
18 Systems Program (CIS) at ECC all times pertinent to this matter. Decl. of Killeen, ¶ 4.
19 Documents obtained from the Secretary of State's office indicate that Hailey Enterprises was
20 formed on April 1, 2007, and Mr. Hailey and Mr. Andrew are members of Hailey Enterprises.
21 *Id.* ¶ 5. During the course of its investigation, Board Staff obtained a copy of four computer hard
22 drives from two computers used by Mr. Andrew and Mr. Hailey located in ECC's Snohomish
23 Hall Room 123. Hard drives one and two, later analyzed by Board Staff, were copied from a
24 computer located at the podium in front of the classroom. *Id.* ¶ 6.

25 2.2 Mr. Andrew taught a Cyber Security First Responder (CFR) Course, offered by
26 the University of Arkansas' Criminal Justice Institute's (CJI) Cyber Terrorism Defense Initiative

1 (CDI), and sponsored by the Department of Homeland Security and the Federal Emergency
2 Management Administration (DHS/FEMA) at ECC. Decl. of Killeen, ¶ 8. Mr. Andrew taught
3 DHS/FEMA sponsored Criminal Justice Institute courses at ECC from July 30 —
4 August 2, 2018 and March 9-12, 2020. *Id.*, ¶ 14. He was paid by CJI to teach these classes. *Id.*,
5 ¶ 9.

6 2.3 Mr. Andrew obtained access to the ECC classroom on behalf of Hailey
7 Enterprises. Decl. of Killeen, ¶ 8, Exhibit 4. Mr. Andrew confirmed that DHS/FEMA was not
8 charged for the use of the classroom. *Id.* He believed that he had the approval to conduct this
9 course using ECC facilities from his direct supervisor, Kevin Stewart (Mr. Stewart), the Dean of
10 the Business Division. *Id.*, ¶ 10. Mr. Stewart, however, did not approve the use of ECC's
11 Snohomish Hall Room 123 to conduct the training and found it to be highly unusual. *Id.*

12 2.4 Board Staff's examination of Mr. Andrew's computer activity for the period of
13 September 24, 2011 through October 25, 2019, revealed a large volume of documents related to
14 his teaching of these DHS courses at ECC. *Id.*, ¶ 17. This includes at least 16 PDFs,
15 14 PowerPoint presentations, and three Word documents. *Id.*

16 2.5 Board Staff's examination of Mr. Andrew's ECC Outlook emails for the period
17 of June 2018 through June 2020 also identified at least 127 emails related to Mr. Andrew's
18 outside business that were sent from Mr. Andrew's ECC Outlook email account, or received into
19 his ECC Outlook account by being cc'd, or forwarded from his personal email account. Decl. of
20 Killeen, ¶ 18. Board Staff's review of Mr. Andrew's ECC Outlook also identified emails
21 received from Kall8, a toll free phone message service configured by Mr. Hailey to send call
22 notifications to his and Mr. Andrew's ECC email account. *Id.* ¶¶ 19-20. The following is an
23 example of such an email notification:
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From: Kall8 | 253-620-6545, GTH LAW <kall8@kall8.com>
Received: 2/1/2019 10:46:21 AM
To: ["sphailey@gmail.com","shailey@edcc.edu","mwandrew@gmail.com","mike.andrew@edcc.edu"]
Subject: Voice Mail Message | 855-732-2223, SP HAILEY ENTERPRISES
Importance: Normal
Sensitivity: Normal
Attachments: 8557322223_2536206545_10452639260001.mp3

Voice Mail Message: Double click on the attachment to play the voice mail file.

Date: 02/01/2019 10:44:30 AM
Number: 855-732-2223, SP HAILEY ENTERPRISES
CallerID: 253-620-6545, GTH LAW
Destination: Voice Mail
File Duration: 00:01:12

Id.

III. CONCLUSIONS OF LAW

3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce the Ethics Act with respect to employees in the executive branch of state government. The Board has jurisdiction over Mike Andrew, whose actions occurred while he was a state employee. The complaint was filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required procedural notices have been provided.

3.2 WAC 10-08-135² provides that a motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The object and function of a summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532 (1968). Summary judgment is proper if (1) there is no genuine issue of material fact, (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);

² The Board has adopted the model rules of procedures, chapter 10-08 WAC. WAC 292-100-006.

1 CR 56(c). The facts of this matter are not in dispute, rendering summary judgment appropriate.
2 There is no factual dispute concerning the existence of the pertinent documents and emails
3 identified during Board Staff’s investigation. Nor is there a dispute that these documents and
4 emails were either related to Mr. Andrew’s outside business, or secured special privileges for
5 himself by utilizing state resources, and did not directly relate to Mr. Andrew’s ECC position.

6 **As discussed below, summary judgment is granted in favor of Board Staff based on**
7 **Respondent’s violations of the Ethics Act.**

8 3.3 The Ethics Act governs the conduct of state officers and employees. Under
9 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

10 3.4 RCW 42.52.160(1) provides the following:

11 No state officer or state employee may employ or use any person, money, or
12 property under the officer's or employee's official control or direction, or in his
13 or her official custody, for the private benefit or gain of the officer, employee, or
14 another.

14 3.5 Based on the Findings of Fact, the Board concludes that Mike Andrew, by a
15 preponderance of the evidence, violated RCW 42.52.160(1) by using state computers and his
16 state email for his own personal benefit or gain. Mr. Andrew used state resources, in the form of
17 time, the state computer system, and the state email system, to support his outside business,
18 Hailey Enterprises. Because his use of state resources related to an outside business, *any* use of
19 resources is prohibited, and the *de minimis* exception is not applicable. WAC 292-110-
20 010(3)(vii) (the *de minimis* rule is applicable only if “[t]he use is not for supporting, promoting
21 the interests of, or soliciting for an outside organization or group.”). Board Staff’s examination
22 of Mr. Andrew’s computer activity, for the period of September 24, 2011 through
23 October 25, 2019, revealed a large volume of documents on his computer relating to his teaching
24 of CJI courses at ECC, including PDF documents, PowerPoint Presentations, and Word
25 documents. Decl. of Killeen, ¶ 17. In addition to the storage of documents, Mr. Andrew sent
26 over 127 emails over a two-year period that related to Hailey Enterprises. These emails, which

1 related to Mr. Andrew's personal business, were sent from Mr. Andrew's ECC Outlook account,
2 received into his ECC Outlook account by being cc'd, or forwarded from his personal email
3 account. Decl. of Killeen, ¶ 18. The potential state time taken by Mr. Andrew to compose such
4 a large volume of emails is substantial. Mr. Andrew also used his state email to receive
5 notifications from a private toll-free phone service (Kall8). Decl. of Killeen, ¶¶ 19-20, Exhibit
6 21.

7 3.6 RCW 42.52.070(1) provides the following:

8 Except as required to perform duties within the scope of employment, no state
9 officer or state employee may use his or her position to secure special privileges
10 or exemptions for himself or herself, or his or her spouse, child, parents, or other
11 persons.

12 3.7 The Board also concludes, based on the Findings of Fact, that Mr. Andrew
13 violated RCW 42.52.070(1) by taking advantage of his position with ECC to secure special
14 privileges for himself and Hailey Enterprises. Specifically, he gained free access to ECC
15 classrooms to teach courses for which he was being separately compensated. In addition,
16 Mr. Andrew utilized space at ECC to store materials for the courses, and utilized an ECC
17 employee to transport those materials to the classroom. Having free access to the classroom
18 benefited Mr. Andrew, whom otherwise may have had to rent space at another location.
19 Mr. Andrew also leveraged his faculty position to gain access to storage space and the use of an
20 ECC employee, without charge to himself or his outside business. Based on these special
21 privileges secured by Mr. Andrew, he violated RCW 42.52.070.

22 3.8 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
23 violation or three times the economic value of anything received or sought in violation of the
24 Ethics Act, whichever is greater. The Board concludes that a \$5,000 penalty is appropriate, as
25 follows:

- 26 • \$2,500 for his misuse of state resources in support of his outside business, Hailey
Enterprises; and
- \$ 2,500 for use of his position to secure special privileges for himself.

1 3.9 In determining the appropriate sanction, the Board reviewed the nature of the
2 violation, as well as the aggravating circumstances and mitigating factors set forth in
3 WAC 292-120-030. Mr. Andrew's violations tend to significantly reduce public respect for or
4 in state government or state government officers or employees. WAC 292-120-030(2)(e). No
5 mitigating factors are present.

6 **IV. FINAL ORDER**

7 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
8 ordered that Mike Andrew is assessed a total monetary civil penalty of \$5,000 based on his
9 violations of RCW 42.52.160(1).

10 4.2 The total amount of \$5,000 is payable in full within 90 days of the effective date
11 of this order.

12 DATED this 1st day of February 2022.

13 WASHINGTON STATE EXECUTIVE ETHICS BOARD

14 *Shirley Battan*

15 _____
16 Shirley Battan, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
- 22 (2) The name and mailing address of the petitioner’s attorney, if any;
- 23 (3) The name and mailing address of the agency whose action is at issue;
- 24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
25 or brief description of the agency action;
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- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led to
2 the agency action;
- 3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 4 (7) The petitioner's reasons for believing that relief should be granted; and
- 5 (8) A request for relief, specifying the type and extent of relief requested.
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
13 Board.