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**BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD**

In the matter of:

STEVEN HAILEY,

Respondent.

OAH NO. 06-2021-AGO-00041

EEB NO. 2020-040

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

**I. PROCEDURAL HISTORY**

1.1 On or about June 28, 2020, the Executive Ethics Board (Board) received a referral from Edmonds Community College (ECC) alleging that Steven Hailey (Mr. Hailey) and Mike Andrew (Mr. Andrew),<sup>1</sup> ECC faculty members, may have violated RCW 42.52, the Ethics in Public Service Act, by utilizing state resources to promote and support their outside business, SP Enterprises LLC/Cyber Security Academy (Hailey Enterprises).

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

1.3 After due and proper notice, a hearing was held on Board Staff’s motion for summary judgment, convening on December 10, 2021, and conducted via Zoom. ALJ Jason Kinn from the Office of Administrative Hearings conducted the proceedings, and Board Chair

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<sup>1</sup> Mr. Andrew is the subject of Case No. 2020-039, which is still pending.

1 Shirley Battan, and members Gerri Davis, Jan Jutte, and Earl Key were present. Also present  
2 were Assistant Attorneys General, Bruce Turcott and Leo Roinila, legal advisors to the Board.

3 1.4 Chad C. Standifer, Assistant Attorney General for Board Staff, was present. The  
4 Board's Executive Director, Kate Reynolds, and other Board Staff members were present.

5 1.5 Mr. Hailey appeared pro se.

6 1.6 Board Staff filed the following documents:

- 7 • Board Staff's Motion for Summary Judgment; and
- 8 • Declaration of David Killeen in Support of Motion for Summary Judgment, with  
attached Exhibits 1-14.

9 1.7 Mr. Hailey did not file a response to Board Staff's Motion for Summary  
10 Judgment.

11 1.8 The proceedings were recorded and open to the public.

12 1.9 The hearing was adjourned on December 10, 2021.

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

## 15 II. FINDINGS OF FACT

16 2.1 Mr. Hailey was a full-time faculty member in the Computer Information Systems  
17 Program (CIS) at ECC all times pertinent to this matter. Decl. of Killeen, ¶ 4. Documents  
18 obtained from the Secretary of State's office indicate that Hailey Enterprises was formed on  
19 April 1, 2007, and Mr. Hailey and Mr. Andrew are members of Hailey Enterprises. *Id.* ¶ 5.  
20 During the course of its investigation, Board Staff obtained a copy of four computer hard drives  
21 from two computers used by Mr. Andrew and Mr. Hailey located in ECC's Snohomish Hall  
22 Room 123. Hard drives one and two, later analyzed by Board Staff, were copied from a computer  
23 located at the podium in front of the classroom. *Id.* ¶ 6.

24 2.2 Board Staff's examination of Mr. Hailey's computer activity for the period of  
25 September 24, 2011 through October 25, 2019, revealed a large volume of documents related to  
26 Mr. Hailey and Hailey Enterprises, many of which contained logos for Cybersecurity Institute

1 or CyberSecurity Academy. Decl. of Killeen, ¶ 9. This includes at least eight PDFs,  
2 107 PowerPoint presentations, and a Word document. *Id.*

3 2.3 Board Staff's examination of Mr. Hailey's ECC Outlook emails for the period of  
4 June 2018 through June 2020 also identified at least 233 emails related to Mr. Hailey's outside  
5 business that were sent from Mr. Hailey's ECC Outlook email account, received into his ECC  
6 Outlook account by being cc'd, or forwarded from his personal email account. Decl. of Killeen,  
7 ¶ 12. Board Staff's review of Mr. Hailey's ECC Outlook emails further identified over  
8 140 emails related to setting up training sponsored by Hailey Enterprises to the Edmonds and  
9 Redmond police departments. *Id.* ¶ 13. Board Staff's review of Mr. Hailey's ECC Outlook  
10 identified emails received from Kall8, a toll free phone message service configured by  
11 Mr. Hailey to send call notifications to his ECC email account. *Id.* ¶¶ 14-15. The following is an  
12 example of such an email notification:

13  
14 **From:** Kall8 | 253-620-6545, GTH LAW <kall8@kall8.com>  
15 **Received:** 2/1/2019 10:46:21 AM  
16 **To:** ["sphailey@gmail.com","shailey@edcc.edu","mwandrew@gmail.com","mike.andrew@edcc.edu"]  
17 **Subject:** Voice Mail Message | 855-732-2223, SP HAILEY ENTERPRISES  
18 **Importance:** Normal  
19 **Sensitivity:** Normal  
20 **Attachments:** 8557322223\_2536206545\_10452639260001.mp3

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

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

27 *Id.*

28 2.4 Board Staff identified over 1,000 personal emails between Mr. Hailey and his  
29 brother. Decl. of Killeen, ¶ 16.

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1 **III. CONCLUSIONS OF LAW**

2 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),  
3 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive  
4 branch of state government. The Board has jurisdiction over Steven Hailey, whose actions  
5 occurred while he was a state employee. The complaint was filed in accordance with  
6 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an  
7 adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required  
8 procedural notices have been provided.

9 3.2 WAC 10-08-135<sup>2</sup> provides that a motion for summary judgment may be granted  
10 and an order issued if the written record shows that there is no genuine issue as to any material  
11 fact and that the moving party is entitled to judgment as a matter of law. The object and function  
12 of a summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880, 886,  
13 441 P.2d 532 (1968). Summary judgment is proper if (1) there is no genuine issue of material  
14 fact, (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled  
15 to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);  
16 CR 56(c). The facts of this matter are not in dispute, rendering summary judgment appropriate.  
17 There is no factual dispute concerning the existence of the pertinent documents and emails  
18 identified during Board Staff’s investigation. Nor is there a dispute that these documents and  
19 emails were either related to Mr. Hailey’s outside business, or were entirely personal in nature.

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

22 3.3 The Ethics Act governs the conduct of state officers and employees. Under  
23 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

24 3.4 RCW 42.52.160(1) provides the following: “No state officer or state employee  
25 may employ or use any person, money, or property under the officer's or employee's official

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

1 control or direction, or in his or her official custody, for the private benefit or gain of the officer,  
2 employee, or another.”

3 3.5 Based on the Findings of Fact, the Board concludes that Steven Hailey, by a  
4 preponderance of the evidence, violated RCW 42.52.160(1) by using his state email for his own  
5 personal benefit or gain. Mr. Hailey used state resources, in the form of time and the state  
6 computer system, to support his outside business Hailey Enterprises. In reaching this conclusion,  
7 the Board carefully considered, and rejected, Mr. Hailey’s claim that his use of state resources  
8 was reflective of the “synergistic” relationship he shares with ECC, and proved to be of greater  
9 benefit to ECC, and its students, than to him personally. Because his use of state resources is  
10 related to an outside business, *any* use of resources is prohibited, regardless of whether the state  
11 may also have derived some benefit as a result of the use. For the same reason, the *de minimis*  
12 exception is likewise inapplicable. WAC 292-110-010(3)(vii) (the *de minimis* rule is applicable  
13 only if “[t]he use is not for supporting, promoting the interests of, or soliciting for an outside  
14 organization or group.”). Board Staff’s examination of Mr. Hailey’s computer activity, for the  
15 period of September 24, 2011 through October 25, 2019, revealed a large volume of documents  
16 on his computer relating to Hailey Enterprises, including PDF documents, PowerPoint  
17 Presentations, and a Word document. Decl. of Killeen, ¶ 9. In addition to the storage of  
18 documents, Mr. Hailey sent well over 200 emails over a two-year period that related to Hailey  
19 Enterprises. *Id.*, ¶ 11. Mr. Hailey also sent over 100 emails to two separate police departments  
20 relating to the setting up of training sponsored by his outside business. *Id.*, ¶ 12. Collectively, the  
21 potential state time taken by Mr. Hailey to compose such a large volume of emails is substantial.  
22 Mr. Hailey also used his state email to receive notifications from a private toll-free phone service  
23 (Kall8). *Id.*, ¶ 13.

24 3.6 The Board also concludes, based on the Findings of Fact, that Mr. Hailey violated  
25 RCW 42.52.160(1) by sending to, or receiving from, his brother over 1,000 emails that were  
26 personal in nature and unrelated to his state job. Such rampant misuse of the ECC email system

1 and state time constitute separate violations of RCW 42.52.160(1). Some *di minimis* personal  
2 use of email is allowed, but such use must comply with each of the conditions set forth in  
3 WAC 292-110-010(3)(a). Such conditions include that the email use be brief, occur infrequently,  
4 and not interfere with the performance of the employee's official duties. WAC 292-110-  
5 010(3)(a). The volume of emails sent and received by Mr. Hailey do not meet the *di minimis*  
6 standard.

7 3.7 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per  
8 violation or three times the economic value of anything received or sought in violation of the  
9 Ethics Act, whichever is greater. The Board concludes that a \$5,500 penalty is appropriate, as  
10 follows:

- 11 • \$3,000 for his misuse of state resources in support of his outside business, Hailey  
Enterprises; and
- 12 • \$2,500 for his misuse of his state email for his personal benefit.

13 3.8 In determining the appropriate sanction, the Board reviewed the nature of the  
14 violations, as well as the aggravating circumstances and mitigating factors set forth in  
15 WAC 292-120-030. Mr. Hailey's violations were continuing in nature, tended to significantly  
16 reduce public respect for or in state government or state government officers or employees, and  
17 involved a special privilege for himself and his outside business. WAC 292-120-030(2)(a), (e),  
18 and (f). Mr. Hailey was using the state computer system for his own personal use on a routine  
19 basis. Such a pervasive abuse of state resources substantiates the penalty levied here. No  
20 mitigating factors are present.

#### 21 **IV. FINAL ORDER**

22 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby  
23 ordered that Steven Hailey is assessed a total monetary civil penalty of \$5,500 based on his  
24 violations of RCW 42.52.160(1).

25 4.2 The total amount of \$5,500 is payable in full within 90 days of the effective date  
26 of this order.

1 DATED this 5<sup>th</sup> day of January 2022.

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3 WASHINGTON STATE EXECUTIVE ETHICS BOARD

4  
5 *Shirley Battan*  
6 \_\_\_\_\_  
7 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.