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

9 In the matter of:

10 FRANKLIN GRAHAM,

11 Respondent.

OAH NO. 01-2023-AGO-00054

EEB NO. 2022-010

12 FINDINGS OF FACT, CONCLUSIONS
13 OF LAW, AND ORDER GRANTING
14 BOARD STAFF'S MOTION FOR
15 SUMMAR JUDGMENT

16 **I. PROCEDURAL HISTORY**

17 1.1 On or about March 10, 2022, the Executive Ethics Board received an agency
18 referral that alleged Franklin Graham (Respondent), an adjunct faculty member of Pierce
19 College, may have violated the Ethics in Public Service Act, RCW 42.52, by using state
20 resources for his personal benefit. Declaration of Justin Cotte ¶ 3, Exhibit 1.

21 1.2 On July 8, 2022, the Board found reasonable cause to believe that a violation of
22 RCW 42.52 was committed, as set forth in the Investigative Report and Board Reasonable Cause
23 Determination (Reasonable Cause Determination).

24 1.3 After due and proper notice, a hearing was held on Board Staff's motion for
25 summary judgment, convening on May 12, 2023, and conducted via Zoom. ALJ TJ Martin from
26 the Office of Administrative Hearings conducted the proceedings, and Board Chair Jan Jutte,

1 along with members Shirley Battan, Earl Key, Kelli Hooke and Megan Abel were present. Leo
2 Roinila, Assistant Attorney General, legal advisor to the Board appeared as well.

3 1.4 Julia Eisentrout, Assistant Attorney General for Board Staff, argued on behalf of
4 Board Staff. The Board's Executive Director, Kate Reynolds, and other Board Staff members
5 were present.

6 1.5 Mr. Graham 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 Justin Cotte in Support of Motion for Summary Judgment, with
attached Exhibits 1-6.

10 1.7 Mr. Graham 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 adjourned on May 12, 2023.

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 Pierce College hired Mr. Graham as a part-time faculty member in the Natural
18 Sciences Division on January 6, 2020. Declaration of Justin Cotte, ¶ 5, Ex. 2. On
19 February 1, 2022, Pierce College hired Respondent as part-time faculty at Joint Base Lewis
20 McChord in the Geology Department. *Id.*

21 2.2 On March 10, 2022, the Board received a referral from Pierce College, which
22 alleged the college discovered Mr. Graham used his laptop to store personal documents when he
23 brought it into the IT department because it was "crashing." Cotte Decl., ¶ 4, Ex. 1. When staff
24 started the data recovery process, they found files that appeared to be personal and inappropriate
25 for the workplace. *Id.*

1 2.3 Using Magnet Forensics Axiom 4.2 software, Board Staff created a forensic
2 image of the hard drive for their review. Cotte Decl., ¶ 6. During their review, Board Staff
3 discovered numerous personal files and pictures Mr. Graham stored on his college issued laptop.
4 Cotte Decl., ¶¶ 6 – 8, Exs. 3 – 5.

5 2.4 Board Staff observed numerous pictures of women alone, and in pictures with
6 Mr. Graham. Cotte Decl., ¶ 6, Ex. 3. Mr. Graham also stored memes on his computer. *Id.* There
7 were over 50 personal pictures stored on Mr. Graham’s college computer, none of which related
8 to his work. *Id.*

9 2.5 Mr. Graham also stored his personal files on his college laptop. Cotte Decl., ¶ 7,
10 Ex. 4. These files included but were not limited to travel documents, visa applications, and
11 letters. *Id.* In total, there were 25 of these types of files on Mr. Graham’s computer. *Id.*

12 2.6 In addition to the pictures and files above, Board Staff also found a number of
13 drafts of personal compositions by Mr. Graham that were not related to any of his work for the
14 college. Cotte Decl., ¶ 8, Ex. 5. These writings included a number of poems by Mr. Graham. *Id.*
15 Altogether, there were 23 such Word documents on Mr. Graham’s Pierce College laptop. *Id.*

16 2.7 On May 25, 2022, Mr. Graham submitted a written response to Board Staff
17 regarding his use of his college laptop. Cotte Decl., ¶ 9, Ex. 6. Mr. Graham admitted that he used
18 the computer for personal reasons, as it was convenient. *Id.* Mr. Graham stated that he did not
19 do it to compromise his professionalism with his students, nor did he profit from other income
20 activities. *Id.*

21 **III. CONCLUSIONS OF LAW**

22 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
23 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive
24 branch of state government. The Board has jurisdiction over Franklin Graham, and the conduct
25 at issue took place while he was a state employee. The complaint was filed in accordance with
26 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an

1 adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required
2 procedural notices have been provided.

3 3.2 WAC 10-08-135¹ provides that a motion for summary judgment may be granted
4 and an order issued if the written record shows that there is no genuine issue as to any material
5 fact and that the moving party is entitled to judgment as a matter of law. “A material fact is one
6 upon which the outcome of the litigation depends.” *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441
7 P.2d 532 (1968). Summary judgment is proper if (1) there is no genuine issue of material fact,
8 (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled to
9 judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);
10 CR 56(c). The facts of this matter are not in dispute, rendering summary judgment appropriate.

11 Mr. Graham does not contest the evidence of his personal use of his state issued laptop,
12 including the storage of personal pictures, files and writing drafts. By using his college computer
13 in this way, Mr. Graham used state resources for his private benefit. **As discussed below,**
14 **summary judgment is granted in favor of Board Staff based on Mr. Graham’s violations**
15 **of the Ethics Act.**

16 3.3 The Ethics Act governs the conduct of state officers and employees. Under
17 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

18 3.4 RCW 42.52.160(1) provides the following:

19 No state officer or state employee may employ or use any person, money, or
20 property under the officer's or employee's official control or direction, or in his
21 or her official custody, for the private benefit or gain of the officer, employee, or
22 another.

22 3.5 Based on the Findings of Fact, the Board concludes that Franklin Graham violated
23 RCW 42.52.160(1) by using his college laptop for his private benefit. Mr. Graham stored
24 numerous pictures of himself, of other people, of memes, none of which related to his work for
25 the college.

26 ¹ The Board has adopted the model rules of procedures, chapter 10-08 WAC. WAC 292-100-006.

1 The Board further concludes based on a preponderance of the evidence, that Mr. Graham
2 violated RCW 42.52.160(1) by using his college issued laptop for his own personal benefit or
3 gain. Mr. Graham used his Pierce College laptop to store a variety of personal files. These
4 personal files included documents for travel, numerous pictures, and personal writings.

5 3.6 RCW 42.52.160(4) provides the following:

6 The appropriate ethics boards may adopt rules providing exceptions to this
7 section for occasional use of the state officer or state employee, of de minimis
8 cost and value, if the activity does not result in interference with the proper
9 performance of public duties.

10 WAC 292-110-010(3) provides, in relevant portion, that:

11 **Permitted personal use of state resources.** This subsection applies to any
12 use of state resources not included in subsection (2) of this section.

13 (a) A state officer or employee's use of state resources is de minimis only if
14 each of the following conditions are met:

- 15 (i) There is little or no cost to the state;
- 16 (ii) Any use is brief;
- 17 (iii) Any use occurs infrequently;
- 18 (iv) The use does not interfere with the performance of any state
19 officer's or employee's official duties;
- 20 (v) The use does not compromise the security or integrity of state
21 property, information systems, or software;
- 22 (vi) The use is not for the purpose of conducting an outside business,
23 in furtherance of private employment, or to realize a private financial
24 gain;
- 25 and
- 26 (vii) The use is not for supporting, promoting the interests of, or
soliciting for an outside organization or group.

3.7 The Board concludes that the evidence establishes that Mr. Graham's use was not
"occasional," "brief" or "infrequent," and, accordingly, the de minimis exception is not
applicable. RCW 42.52.160(4), WAC 292-110-010(3)(vii). The volume and variety of files kept
on Mr. Graham's Pierce College laptop indicated repeated personal use. Thus, this use is not de
minimis under WAC 292-110-010.

1 3.8 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
2 violation or three times the economic value of anything received or sought in violation of the
3 Ethics Act, whichever is greater. The Board concludes that a \$3,000 penalty is appropriate.

4 3.8 In determining the appropriate sanction, the Board reviewed the nature of the
5 violation, as well as the aggravating circumstances and mitigating factors set forth in
6 WAC 292-120-030. Mr. Graham's violations were continuing in nature, and tend to significantly
7 reduce public respect for or in state government or state government officers or employees.
8 WAC 292-120-030(2)(a) and (e). No mitigating factors are present.

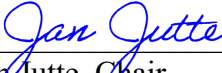
9 **IV. FINAL ORDER**

10 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
11 ordered that Franklin Graham is assessed monetary civil penalty of \$3,000 based on his
12 violations of RCW 42.52.160(1).

13 4.2 The total amount of \$3,000 is payable in full within 90 days of the effective date
14 of this order.

15 DATED this 7th day of June 2023.

16 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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Jan Jutte, 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.