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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 In the Matter of Enforcement Action Against:

PDC CASE NO. 13-031

10 Kevin Hulten

FINAL ORDER

11 Respondent.

12 **I. INTRODUCTION**

13 This matter was heard by the Washington State Public Disclosure Commission
14 (Commission) on June 23, 2016 at the PDC Office, 711 Capitol Way, Room 206, Olympia,
15 Washington 98504. The hearing was held pursuant to RCW 34.05, RCW 42.17A, and WAC
16 390-37. The proceeding was open to the public, recorded, and videotaped.

17 Commissioners Katrina Asay, Chair, Anne Levinson, Vice Chair, John Bridges and
18 Jack Johnson were present. Assistant Attorney General Chad Standifer presented the matter on
19 behalf of Public Disclosure Staff (Staff). The Respondent, Kevin Hulten, who is not
20 represented, appeared by phone.

21 At the June 23, 2016 hearing, Staff offered 15 exhibits which had been pre-marked as
22 Exhibits S-1 through S-15. As there was no objection, the Commission admitted exhibits S-1
23 through S-15.

24 Respondent offered 18 exhibits which had been pre-marked as Exhibits R-1 through
25 R-18. The Commission rejected exhibits R-1, R-4 and R-18 because they were duplicative of
26

1 Exhibits S-9 and S-10. As there were no objections to the remaining exhibits, the Commission
2 admitted Exhibits R-2 through R-3 and R-5 through R-17.

3 Staff presented the testimony of Tony Perkins, Kurt Young, Gary Haakenson (who
4 appeared by phone) and Detective Thien T. Do. Respondent presented his testimony by phone.

5 The Commission had before it the following materials: Notice of Administrative
6 Charges; Respondent's Prehearing Brief; Staff Exhibits S-1 through S-15; Respondent's
7 Exhibits R-2 through R-3, and R-5 through R-17. The Commission did not consider
8 information outside of the evidence presented by the parties.

9 The hearing concerns the allegations that the Respondent had violated former
10 RCW 42.17.130 and RCW 42.17A.555 by using Snohomish County facilities to further Aaron
11 Reardon's 2011 Re-election Campaign and John "Jack" Connelly's 2012 Campaign.

12 After reviewing the record in this case, listening to testimony and considering
13 argument, the Commission determines that Mr. Hulten violated former RCW 42.17.130 and
14 RCW 42.17A.555. The Commission HEREBY ORDERS that the following Findings of Fact,
15 Conclusions of Law, and Final Order of the Commission be entered:

16 17 **II. FINDINGS OF FACT**

18 1. On December 2, 2015, Staff issued a Notice of Administrative Charges on
19 December 2, 2015 to Kevin Hulten.

20 2. On May 1, 2008, Aaron Reardon filed a Candidate Registration (C-1 report)
21 declaring his candidacy for re-election to the office of Snohomish County Executive in 2011.

22 3. On December 6, 2010, Mike Hope filed a C-1 report declaring his candidacy for
23 Snohomish County Executive in 2011. Mike Hope was a detective in the Seattle Police
24 Department during the 2011 election cycle.

25 4. Aaron Reardon hired Kevin Hulten as an Executive Analyst in the Snohomish
26 County Executive's Office. Mr. Hulten started in that position on January 18, 2011.

1 Mr. Hulten was a management, exempt employee. His normal work hours were 8 a.m. to
2 5 p.m. Monday through Friday; however, his hours were flexible and varied according to work
3 responsibilities. His official duties included, but were not limited to, researching and analyzing
4 issues and problems confronting the County, developing findings from that research and
5 reporting those findings to Aaron Reardon and the Snohomish County Council. His duties also
6 included assisting with Executive Office lobbying efforts and responding to constituent
7 concerns. Mr. Hulten's direct supervisor was Gary Haakson.

8 5. It was not part of Mr. Hulten's job to assist any candidate with his or her
9 campaign, and he was never authorized by his direct supervisor to work on any campaign using
10 county equipment or on county work time.

11 6. Mr. Hulten's position was formerly held by Amy Ockerlander. When he
12 started, Mr. Hulten was assigned the equipment that had previously been assigned to Ms.
13 Ockerlander, including her landline phone number.

14 7. The cell phone previously assigned to Ms. Ockerlander was broken when
15 Mr. Hulten started work with Snohomish County. The County authorized Mr. Hulten to have a
16 County phone number added to his personal cell phone device as a second number. The
17 County paid for the cost associated with the County phone number.

18 8. On three separate occasions, Mr. Hulten made telephone calls to PDC Staff
19 member Tony Perkins from a Snohomish County Executive Office's cellphone number during
20 regular business hours. Mr. Hulten contacted Mr. Perkins on March 10, 2011 to discuss the
21 use of police uniforms by public employees in political advertising. Mr. Hulten again
22 contacted Mr. Perkins on March 31, 2011 to ask about lobbying groups started by State
23 officials and lobbying activities involving State legislators. Finally Mr. Hulten contacted Mr.
24 Perkins on April 7, 2011 to discuss activities being taken by a social welfare organization that
25 Mr. Hulten alleged was operating as an unregistered political committee controlled by a
26 candidate. Mr. Perkins's telephone logs indicated that Mr. Hulten used the name "Kyle

1 Hulten.” Other than the overall charge for the cellular line, there were no additional charges in
2 connection with these calls.

3 9. Mr. Perkins followed up with an email response on March 10, 2011 addressed
4 to “Kyle” concerning the use of public agency uniforms in photos that are staged for a
5 campaign purpose. On March 24, 2011, Mr. Hulten responded to Mr. Perkins email with some
6 additional questions regarding public schools and students in a state office campaign. The
7 email was signed “Kyle.” The email address indicated the name associated with the email
8 address was “Kevin.” The email was sent from a private email account and not from a
9 Snohomish County email address.

10 10. Between the period of April 19, 2011 and May 2, 2011, Mr. Hulten made six
11 telephone calls to Colby Underwood. Colby Underwood is a political consultant who was paid
12 to work on Aaron Reardon’s 2011 re-election campaign. With the exception of calls made on
13 May 2, 2011 and April 26, 2011, these calls lasted no more than two minutes. The call on
14 April 26, 2011 lasted three minutes, and the call on May 2, 2011 at 9:56 am lasted one minute.
15 Other than the overall charge for the cellular line, there were no additional charges in
16 connection with these calls.

17 11. On September 27, 2011 at approximately 2:26 pm, Kevin Hulten called Adam
18 Matherly from his Snohomish County assigned telephone landline. The call lasted
19 approximately 1 hour and 4 minutes. Snohomish County was billed and paid \$2.51 for the
20 call. Mr. Matherly, an attorney, represented a John Chambers. On July 6, 2011, Mr. Chambers
21 had submitted a public disclosure request to the Seattle Police Department to obtain Mike
22 Hope’s personnel file. On September 27, 2011, there was at least one press release issued
23 alleging that the public disclosure request made by John Chambers was actually made by
24 someone else. On September 28, 2011, and in response to the September 27, 2011 press
25 release, Mr. Matherly issued a statement indicating that Mr. Chambers existed and had in fact
26 made the public disclosure request in question.

1 12. Mr. Hulten also called Mr. Matherly on October 4, 2011 at approximately 3:52
2 pm from Mr. Hulten's Snohomish County assigned landline telephone number. The call lasted
3 approximately 1 hour and 6 minutes. Snohomish County was billed and paid \$2.59 for the call.

4 13. On March 13, 2013, Snohomish County gave Detective Thien Do a hard drive
5 as part of an ongoing criminal investigation. The hard drive came from a laptop which had
6 been issued to Kevin Hulten. The drive was removed from that laptop prior to Mr. Hulten
7 receiving a new laptop. Detective Thien, who is a certified computer forensic examiner,
8 conducted a forensic review of the hard drive given to him by Snohomish County. Detective
9 Thien was able to recover p folders and documents which had been deleted but were still
10 discoverable on the hard drive using specialized software. The documents and folders were on
11 the drive provided by Snohomish County. One of the folders recovered was a Dropbox folder.
12 Dropbox provides "cloud" (internet) storage for documents. It allows a subscriber to download
13 documents from cloud storage. A subscriber must "sync" or download documents for the
14 documents to appear on the hard drive of a computer. As the drive had not been connected to
15 the internet during Det. Do's recovery process, these records could not have been pulled down
16 from the Dropbox cloud during the recovery process.

17 14. Contained in the recovered Dropbox folder were approximately 20 documents
18 related to Mike Hope, Aaron Reardon's opponent in the 2011 Snohomish County Executive
19 race. These documents included draft requests for public records, responses to those requests,
20 research and strategy regarding Mike Hope, drafts of a public disclosure complaint regarding
21 Mike Hope, and a draft complaint to the Legislative Ethics Board about Mike Hope. Some of
22 these documents were contained in a folder entitled "2011 Review & Opp Research Master."
23 None of these documents were connected to Snohomish County business. The document
24 properties for the majority of the 20 Dropbox documents found on the hard drive were either
25 created, accessed, modified and/or stored by Mr. Hulten on his Snohomish County laptop
26 computer during his normal work hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.

1 15. In May 2012, Mr. Hulten and Jon Rudicil, another Snohomish County
2 Executive employee, formed Thomas and French, LLC. Thomas and French provided political
3 consulting services to individuals.

4 16. Also contained in the recovered Dropbox were approximately 10 documents
5 related to work done by Thomas and French for the 2012 State Senate race in the 27th District.
6 Running in that race were Jeannie Darneille and her opponent John "Jack" Connelly. Included
7 in those 10 documents was an invoice for work completed for TR Strategies, who was the
8 primary political consultant on the Connelly Campaign, opposition research including online
9 background checks, legislative bill research, information regarding Ms. Darneille's primary
10 contributions and supporters, a draft document entitled "anti-Darneille hit piece" drafted by
11 Mr. Hulten, and a document discussing issues in which Ms. Darneille was potentially
12 vulnerable to criticism. The document properties for the majority of the 10 Dropbox
13 documents found on the hard drive were either created, accessed, modified and/or stored by
14 Mr. Hulten on his Snohomish County laptop computer during his normal work hours of
15 8:00 a.m. to 5:00 p.m., Monday through Friday.

16 17. Staff attempted to contact Mr. Hulten three times between July 17, 2013 and
17 February 11, 2014 by sending a letter and enclosing the April 11, 2013 Staff generated
18 complaint. The letter requested he respond to the allegations. Staff sent the letter to a
19 Washington address.

20 18. On March 15, 2014, Mr. Hulten emailed Staff stating he no longer resided in
21 Washington and had not received the previously sent requests for a response until this date.
22 Mr. Hulten indicated he would like to respond to the allegations, and requested that Staff email
23 him the relevant materials.

24 19. On March 24, 2014, Staff emailed Mr. Hulten a copy of the April 11, 2013 Staff
25 generated complaint, and a questionnaire regarding the phone calls and documents.
26

1 20. On April 1, 2014, Mr. Hulten responded to the allegations. Mr. Hulten response
2 was an eleven page document with nine attached exhibits. A copy of Mr. Hulten's was
3 admitted as Exhibit S-9.

4 21. In September 2014 and in January 2015, Staff unsuccessfully attempted to
5 arrange a voluntary interview. On September 15, 2014, Staff emailed Mr. Hulten informing
6 him they would like to conduct a telephone interview under oath. Staff followed up with a
7 phone call to Mr. Hulten on September 19, 2014 regarding scheduling an interview. Mr.
8 Hulten asked whether the interview was voluntary or involuntary and was told it was
9 voluntary. On January 15, 2014, Staff left a voicemail for Mr. Hulten indicating that a
10 subpoena would be issued if he did not make himself available for an interview.

11 22. Staff sent by certified mail a subpoena to Mr. Hulten on July 28, 2015. Staff
12 had obtained Mr. Hulten's current address from his parents. The subpoena was returned as
13 "Unclaimed."

14 23. By arrangement made by the Staff, ABC Legal Services served Mr. Hulten with
15 a subpoena for him to participate in an investigative interview on October 21, 2015.

16 24. Mr. Hulten did not appear or participate in the investigative interview scheduled
17 on October 21, 2015. He also failed to contact Staff regarding the subpoena or the
18 investigative interview.

19 20 **III. CONCLUSIONS OF LAW**

21 1. The Commission has jurisdiction to hear this matter pursuant to
22 RCW 42.17A.755.

23 2. Former RCW 42.17.130, which was effective until December 31, 2011,
24 provides:

25 No elective official nor any employee of his [or her] office nor any person
26 appointed to or employed by any public office or agency may use or authorize
 the use of any of the facilities of a public office or agency, directly or indirectly,

1 for the purpose of assisting a campaign for election of any person to any office
2 or for the promotion of or opposition to any ballot proposition. Facilities of a
3 public office or agency include, but are not limited to, use of stationery,
4 postage, machines, and equipment, use of employees of the office or agency
during working hours, vehicles, office space, publications of the office or
agency, and clientele lists of persons served by the office or agency. However,
this does not apply to the following activities:

5 (1) Action taken at an open public meeting by members of an elected
6 legislative body or by an elected board, council, or commission of a special
7 purpose district including, but not limited to, fire districts, public hospital
8 districts, library districts, park districts, port districts, public utility districts,
9 school districts, sewer districts, and water districts, to express a collective
10 decision, or to actually vote upon a motion, proposal, resolution, order, or
ordinance, or to support or oppose a ballot proposition so long as (a) any
required notice of the meeting includes the title and number of the ballot
proposition, and (b) members of the legislative body, members of the board,
council, or commission of the special purpose district, or members of the
public are afforded an approximately equal opportunity for the expression of
an opposing view;

11 (2) A statement by an elected official in support of or in opposition to any
12 ballot proposition at an open press conference or in response to a specific
inquiry;

13 (3) Activities which are part of the normal and regular conduct of the office
or agency.

14 3. RCW 42.17A.555, which became effective January 1, 2012:

15 No elective official nor any employee of his or her office nor any person
16 appointed to or employed by any public office or agency may use or authorize
17 the use of any of the facilities of a public office or agency, directly or indirectly,
18 for the purpose of assisting a campaign for election of any person to any office
19 or for the promotion of or opposition to any ballot proposition. Facilities of a
public office or agency include, but are not limited to, use of stationery,
postage, machines, and equipment, use of employees of the office or agency
during working hours, vehicles, office space, publications of the office or
agency, and clientele lists of persons served by the office or agency. However,
this does not apply to the following activities:

20 (1) Action taken at an open public meeting by members of an elected
21 legislative body or by an elected board, council, or commission of a
22 special purpose district including, but not limited to, fire districts, public
23 hospital districts, library districts, park districts, port districts, public
24 utility districts, school districts, sewer districts, and water districts, to
25 express a collective decision, or to actually vote upon a motion,
26 proposal, resolution, order, or ordinance, or to support or oppose a ballot
proposition so long as (a) any required notice of the meeting includes the
title and number of the ballot proposition, and (b) members of the
legislative body, members of the board, council, or commission of the
special purpose district, or members of the public are afforded an
approximately equal opportunity for the expression of an opposing view;

- 1 (2) A statement by an elected official in support of or in opposition to any
2 ballot proposition at an open press conference or in response to a
3 specific inquiry;
4 (3) Activities which are part of the normal and regular conduct of the office
5 or agency.
6 (4) This section does not apply to any person who is a state officer or state
7 employee as defined in RCW 42.52.010.

8 4. Staff has the burden of proving a violation of RCW 42.17.130 and RCW
9 42.17.555 by a preponderance of the evidence.

10 5. Staff met its burden by proving that Respondent violated former
11 RCW 42.17.130 by using Snohomish County facilities including equipment such as his County
12 assigned cell phone account, County assigned laptop and hard drive, and County work time in
13 furtherance of Aaron Reardon's 2011 re-election campaign.

14 6. Staff met its burden by proving that Respondent violated RCW 42.17A.555 by
15 using Snohomish County facilities including equipment such as his County assigned laptop and
16 hard drive and work time in furtherance of John "Jack" Connelly's 2012 election campaign.

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1 IV. ORDER

2 Based upon the findings and conclusion, the Commission orders that:

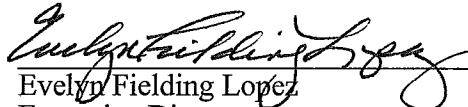
3 1. The Respondent is assessed a civil penalty of \$2,500 which is payable within
4 30 days of the date of this order.

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6 The Executive Director is authorized to enter this order on behalf of the Commission.

7 So ORDERED this 7th day of ^{July}~~June~~, 2016.

8 WASHINGTON STATE PUBLIC
9 DISCLOSURE COMMISSION

10 FOR THE COMMISSION:

11 
12 Evelyn Fielding Lopez
Executive Director

13 *Copy of this Order mailed and emailed to:*

14 Kevin Hulten, Respondent (kevin.hulten@icloud.com)

15 Chad Standifer, AAG, Attorney for PDC Staff (chads@atg.wa.gov)

16 I, Kurt Young, certify that I *emailed and*
17 mailed a copy of this order to the Respondent/
Applicant at his/her respective address postage
pre-paid on the date stated herein.
18 Kurt Young 7/7/2016
Signed Date

19 NOTICE: RECONSIDERATION

20 PURSUANT TO THE PROVISIONS OF RCW 34.05.470 AND WAC 390-37-150 YOU
21 MAY FILE A PETITION FOR RECONSIDERATION WITH THE PDC WITHIN TWENTY-
22 ONE (21) DAYS FROM THE DATE THIS FINAL ORDER IS SERVED UPON YOU. ANY
REQUEST FOR RECONSIDERATION MUST STATE THE SPECIFIC GROUNDS FOR
THE RELIEF REQUESTED. PETITIONS MUST BE DELIVERED OR MAILED TO THE
WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, 711 CAPITOL WAY,
ROOM 206, BOX 40908, OLYMPIA WA 98504-0908.

23 NOTICE: PETITION FOR JUDICIAL REVIEW

24 YOU HAVE THE RIGHT TO APPEAL THIS FINAL ORDER TO SUPERIOR COURT,
25 PURSUANT TO THE PETITION FOR JUDICIAL REVIEW PROVISIONS OF
26 RCW 34.05.542. ANY PETITION FOR JUDICIAL REVIEW OF THIS FINAL ORDER
MUST BE FILED WITH THE COURT AND ALSO SERVED UPON BOTH THE
COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL WITHIN THIRTY
(30) DAYS AFTER THE DATE THIS FINAL ORDER IS SERVED UPON YOU.