

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

In the Matter of Enforcement Action
Against:

Mark McCrady

Respondent.

Case No. 13-022

**STIPULATION AS TO FACTS,
VIOLATIONS AND PENALTY**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Mark McCrady, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. Cowlitz Public Utility District (Cowlitz PUD) is located in Longview, Washington. It provides power to utility customers in Southwest Washington. Cowlitz PUD is managed by a board of three elected Commissioners who are responsible for hiring the General Manager, developing general policy direction for the PUD, and approving the annual operating budget.

2. During 2012, the period at issue in the complaint, Cowlitz PUD's General Manager was Brian Skeahan and its three Commissioners were Merritt "Buz" Ketcham, Ned Piper, and Respondent McCrady.
3. Respondent McCrady ran for reelection in 2012, and was defeated by Kurt Anagnostou in the November 6, 2012 general election. The current board consists of Ketcham, Piper, and Anagnostou. Skeahan is no longer the General Manager, as of January 16, 2013, following his termination by the Board.

Campaign Photo Shoot During Mark McCrady's 2012 Campaign

4. In the Spring of 2012, Skeahan and McCrady together approached Tim Johnston, Cowlitz PUD Manager of Systems Engineering. Johnston reported to Director of Engineering Ray Johnson, who reported to Chief Operating Officer Don McMaster, who reported to General Manager Brian Skeahan.
5. During their conversation, Skeahan asked Johnston if Johnston could arrange for Cowlitz PUD engineering and operations staff to meet at a substation to take a picture with McCrady. Johnston understood the photos were intended for use in McCrady's reelection campaign, and followed the direction he received from Skeahan and McCrady. Johnston made arrangements for the photo shoot with the assistance of Steve Brock, Cowlitz PUD Operations Superintendent.
6. Around 1:00 p.m. on May 25, 2012, Johnston took approximately 14 photographs of McCrady with approximately 25 Cowlitz PUD employees at Cowlitz PUD's 7th Avenue substation. The employees were on work time following their lunch break. The employees arrived at the substation in Cowlitz PUD vehicles.
7. Johnston took the photos with a Cowlitz PUD camera. The photos were then stored on a Cowlitz PUD computer.
8. McCrady originally intended to use some of the photos for his personal use. He also intended to use some of the photos for a campaign brochure for his 2012 reelection campaign. Johnston provided copies of the photos to McCrady.

9. Based on the advice of McCrady's campaign manager, which was later confirmed by Cowlitz PUD General Counsel Paul Brachvogel, the photos were not used for campaign purposes.

Preparation and Use of Campaign Briefing Document to Assist McCrady's 2012 Campaign

10. On the morning of September 14, 2012, McCrady requested information from Skeahan for use during a newspaper editorial board meeting later that day.- McCrady understands that Skeahan then called Gary Huhta, Cowlitz PUD Director of Power Supply, and told Huhta that McCrady would be talking with the newspaper later that day and needed information right away. McCrady further understood that Skeahan outlined the information McCrady wanted concerning the PUD's compliance with 1-937, a Washington State initiative concerning renewable energy.
11. Huhta prepared contemporaneous handwritten notes of his September 14, 2012 telephone call with Skeahan. The notes indicate that Skeahan requested information for McCrady to use in responding to statements by McCrady's election opponent Kurt Anagnostou regarding PUD's compliance with 1-937. Huhta's notes indicate further that Skeahan directed Huhta to produce the requested information within the hour, or by 9:00 am.
12. McCrady understands that Huhta understood the information was being requested for use by McCrady in his campaign, but that at the time, Huhta did not know that to do so would be prohibited under state law as unlawfully using public facilities to assist a campaign.
13. On September 14, 2012 at 9:12 a.m., Huhta emailed the requested information to McCrady by including the information in the body of the email. Later on September 14, 2012, McCrady presented a document to The Daily News editorial board, using the exact words prepared by Huhta, without any change other than the addition of a title to the document.

STATUTORY AND RULE AUTHORITY

14. RCW 42.17A.555 states, in part: “No elective official nor any employee of his office nor any person 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, for the purpose of assisting a campaign for election of any person to any office[.]”

...[T]he foregoing provisions of this section shall not apply to the following activities:

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

15. WAC 390-05-273 defines the “normal and regular conduct” of a public office or agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”

VIOLATIONS

16. Based on the Stipulation of Facts set forth above, Respondent Mark McCrady stipulates to a violation of RCW 42.17A.555 for using and authorizing the use of Cowlitz PUD facilities (staff time, camera, vehicles, and other facilities) for a photo shoot that occurred in May of 2012 for the purpose of assisting McCrady’s 2012 reelection campaign.

17. Respondent Mark McCrady further stipulates that based on the Stipulation of Facts set forth above, the Commission would likely find that he violated RCW 42.17A.555 by using or authorizing the use of Cowlitz PUD facilities (staff time, computers, and other facilities) to prepare a briefing document which McCrady then used during an interview with the local newspaper editorial board the same day regarding his campaign, thereby assisting McCrady’s re-election campaign. In the interest of

avoiding the risk and expense of a contested proceeding, McCrady agrees to pay a civil penalty as discussed below.

PENALTY

18. Based upon the Stipulation of Facts and Violations set forth above, Respondent Mark McCrady agrees to pay a total civil penalty of \$500.

19. Respondent Mark McCrady affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

20. The Public Disclosure Commission agrees this agreement constitutes a final dispensation of any and all allegations against Respondent McCrady contained in the complaint, and with this agreement terminates any pending investigation or action regarding McCrady.

Andrea M. Doyle
Andrea McNamara Doyle, Executive Director
Public Disclosure Commission

10-22-14
Date Signed

Mark McCrady
Mark McCrady, Respondent

10-22-14
Date Signed

INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

APPEALS

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.