

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE PIERCE COUNTY
ETHICS COMMISSION**

In the Matter of:

DALE WASHAM,

Respondent.

Complaint No. 2011-03

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

I. PROCEDURAL HISTORY

1.1 This matter was heard before the Pierce County ethics Commission (“the Commission”) on March 28, 2012 for investigation under Section 3.12.080 of the Pierce County Code of Ethics. The case was commenced by a complaint received by the Commission on May 18, 2011.

1.2 On August 11, 2011, the Commission’s Hearing Officer made a determination that probable cause existed to believe that that Mr. Washam violated Section 3.12.030.I.

1.3 On November 8, 2011, the Commission notified Mr. Washam of their decision to pursue a formal investigation by way of holding a hearing to determine if a violation occurred.

1.4 On January 13, 2012, the Commission scheduled the hearing for March 28, 2012.

1.5 Prior to the hearing, Mr. Washam, through his attorney, Richard Wooster filed a Motion to Dismiss the complaint with the Commission. On February 15, 2012 the Commission notified Mr. Wooster that they would hear and consider Mr. Washam’s Motion to Dismiss immediately prior to the start of the scheduled hearing.

1 1.6 The hearing was held at the Tacoma Public Library – Swasey Branch, 7001-6th
2 Avenue Tacoma, on March 28, 2012 commencing at 2:00 PM. Commission Chair, Mari
3 Kruger-Leavitt conducted the proceedings. Commission members Arthur Schmidt,
4 Christopher Gilbert, Julie Lindner Runyan, and Marlo Oesch were also present as well as
5 Melanie de Leon, Special Deputy Prosecuting Attorney, legal advisor to the Commission.

6 1.7 Mr. Washam appeared and was represented at the hearing by his attorney of
7 record, Richard Wooster.

8 1.8 The Commission Chair convened the proceedings at 2:00 p.m. Mr. Wooster
9 presented his Motion to Dismiss the complaint. During the proceedings, he orally argued that
10 the complaint should be dismissed based upon the following reasons:

- 11 • The facts alleged do not establish a violation of the Pierce County Code 3.12
- 12 • Even if the facts met the standard, the allegation is *de minimus* and not
 appropriate for further review or action.
- 13 • The complaint was released to the local newspapers by either the
14 Commission or the complainant and this breach of confidentiality requires
 dismissal of the charge.

15 Mr. Washam's written motion also argued that Pierce County's Ethics Code may be
16 unconstitutional and may be declared invalid to the extent that it reaches too far.

17 1.9 After hearing Mr. Washam's motion, the Commission recessed and convened
18 an Executive session to deliberate. At 2:35 p.m. the Commission reconvened the public
19 hearing and ruled to deny Mr. Washam's Motion to Dismiss on the following grounds:

- 20 • It is the intent of the hearing to determine whether the facts establish a
21 violation of Pierce County Code 3.12 and this determination cannot be made
22 without the Commission hearing all of the testimony and reviewing all of
23 the evidence as presented.
- 24 • Pierce County Code Section 3.12.030 I, does not provide a *de minimus* use
25 exception to the use of county resources.
- 26 • Under PCC 3.12.080 B, if a complainant breaches confidentiality regarding
 the fact that a complaint has been filed, the complaint *may* be dismissed as

1 provided in Section 3.12.090 C. It was determined by the Commission that
2 a copy of the complaint was provided to the newspaper in response to a
3 public records request. Further, Mr. Washam provided no evidence that the
4 complainant had breached confidentiality and "leaked" the complaint to the
5 newspaper.

- The Commission has no ability or authority to determine the
constitutionality of a county code.

6 1.8 The County presented Exhibits 1 through 5, which were admitted into evidence:

- 7 1. Complaint of an Alleged Ethical Violation, No. 2011-03, dated May 12, 2011.
- 8 2. Pierce County Ethics Commission Findings of Fact, Conclusions of Law, and
9 Initial Determination Ethics Complaint 2011-03, dated August 11, 2011.
- 10 3. E-mail from Alberto Ugas to Art Wang, dated June 20, 2011.
- 11 4. Deposition of Alberto Ugas, In the Matter of the Recall of Mark Lindquist,
12 Matter No. 10-2-14651-8, dated December 16, 2010.
- 13 5. Letter from Dale Washam to Art Wang, dated August 10, 2011.

14 1.9 Mr. Washam presented five exhibits that were admitted into evidence:

- 15 D. Attorney General Opinions addressing the requirement to conduct Physical
16 Inspections.
- 17 E. Investigative Report by Dale Washam September 2, 2009.
- 18 I. Statement of Facts presented to the Pierce County Council March 11, 2009.
- 19 J. Exhibits listed on page 40 of Exhibit E.
- 20 K. Letter to Rob McKenna from Washam dated 3-25-09 regarding full
21 investigation with attachments.

22 1.10 The proceedings were recorded and open to the public.

23 1.11 The Commission heard the sworn testimony of Art Wang, Hearing Officer,
24 Bertha Fitzer, Gretchen Borck, Alberto Ugas and Dale Washam.

25

26 Based on the evidence presented, the Commission enters the following Findings of Fact
and Conclusions of Law:

II. FINDINGS OF FACT

2.1 As the elected Assessor-Treasurer for Pierce County, Dale Washam is
governed by the Pierce County Code ("PCC") Chapter 3.12, Code of Ethics. Since his
election in 2008, Dale Washam has argued that his predecessor, Ken Madsen, should be

1 investigated for actions that occurred while Madsen was the Pierce County Assessor-
2 Treasurer. Neither the Pierce County Prosecutor's office nor any state agency have pursued
3 Mr. Washam's request for an investigation.

4 2.2 The Pierce County Ethics Commission received a complaint alleging that Mr.
5 Washam violated several sections of Chapter 3.12 PCC. The Commission's Hearing
6 Examiner conducted an investigation pursuant to PCC Section 3.12.080 C and found that
7 probable cause existed to believe that Dale Washam violated PCC Section 3.12.030 I that
8 states:

9 No person and no County personnel shall:

10 1. Use, request, or permit the use of County motor vehicles, equipment,
11 materials, or property, except in the conduct of official business;

12 2. Use, request, or permit the use of County employee services during County
13 time except in the conduct of official business.

14 2.3 On April 9, 2010, Ms. Fitzer declared her intentions to run for the position of
15 Pierce County Prosecutor; the elections were to occur in November 2010. At that time, Ms.
16 Fitzer was employed as a Deputy Prosecuting Attorney for the Pierce County Prosecutor's
17 office. Ms. Fitzer had been employed by the Pierce County Prosecutor's Office from January
18 29, 2001 to September 10, 2010, when she resigned. At the time of her resignation, Mark
19 Lindquist was the elected Pierce County Prosecutor.

20 2.4 In September 2010, Mr. Washam, through his personal assistant, Gretchen
21 Borck, contacted Bertha Fitzer to schedule a meeting with her. Ms. Fitzer refused to meet
22 with Mr. Washam until after her resignation from the Pierce County Prosecutor's Office.

23 2.5 The meeting with Mr. Washam occurred on September 14, 2010, commencing
24 at 10:00 a.m. and lasting approximately 90 minutes. Mr. Alberto Ugas, Deputy Assessor-
25 Treasurer and Gretchen Borck attended the meeting along with Ms. Fitzer and Mr. Washam.
26

1 The meeting took place in Conference Room 3 that is part of the Pierce County Annex
2 building located at 2401 South 35th Street, Tacoma, WA 98409.

3 2.6 During approximately the first 15 minutes of this meeting, Mr. Washam
4 questioned Ms. Fitzer about the seriousness of her campaign. Mr. Washam made comments
5 about the fact that Ms. Fitzer's campaign did not seem to be very well publicized and
6 questioned Ms. Fitzer why her campaign signs were not out. Mr. Washam asked Ms. Fitzer
7 whether her campaign was "for real."
8

9 2.7 Mr. Washam indicated to Ms. Fitzer that he could "deliver votes," "get her
10 elected" and had "dynamite" information that he could give her that would help in her
11 campaign.

12 2.8 Approximately one hour of the September 14, 2010 meeting pertained to Mr.
13 Washam's desire for an investigation into the issues he had raised regarding his Assessor-
14 Treasurer predecessor.

15 2.9 During the last portion of the meeting Mr. Washam or Mr. Ugas discussed
16 helping Ms. Fitzer's campaign against Mark Lindquist. At that point, Mr. Ugas left the
17 meeting and returned a few minutes later carrying a 8 1/2" x 11" color "graphic" that depicted a
18 picture of Mark Lindquist with a red circle around his head with a slash through it and the
19 words, "Defeat Lindquist," Mr. Ugas showed the graphic to Ms. Fitzer; Mr. Washam did
20 nothing during the meeting to keep Mr. Ugas from doing so.
21

22 2.10 The Commission heard testimony from Dale Washam and Alberto Ugas
23 regarding their interpretations of the meeting's conversations and found their interpretations not
24 credible, except regarding the graphic of Mark Lindquist. Both Mr. Washam and Mr. Ugas
25 admitted that Mr. Ugas had shown the graphic of Prosecutor Lindquist to Ms. Fitzer at the
26

1 meeting and both admitted that Mr. Washam did not speak to Mr. Ugas after the meeting
2 concluded about showing the graphic of Mr. Lindquist to Ms. Fitzer. The Commission found
3 this testimony to be credible and substantiated by other evidence.

4 III. CONCLUSIONS OF LAW

5 3.1 The Commission has jurisdiction to hear this matter pursuant to PCC Section
6 3.12.070 J, which authorizes the Commission to conduct investigations and hold hearings and
7 Section 3.12.090 A, which authorizes the Commission to impose sanctions. The complaint
8 was filed in accordance with PCC 3.12.080 A, the Hearing Officer found probable cause
9 pursuant to PCC 3.12.080 C, and the public hearing was conducted pursuant to PCC 3.12.080
10 I and J. All the required procedural notices were provided.

11 3.2 The Pierce County Ethics Code, Section 3.12, governs the conduct of county
12 employees. A county employee may not use, request, or permit the use of County motor
13 vehicles, equipment, materials, or property, except in the conduct of official business and no
14 county employee may use, request, or permit the use of County employee services during
15 County time except in the conduct of official business. (PCC 3.12.030 I) There is no *de*
16 *minimis* use exception to this prohibition.

17 3.3 Dale Washam violated PCC 3.12.030 I when he used county resources,
18 including time, staff and facilities to discuss the campaign efforts of Bertha Fitzer and allowed
19 a subordinate to show and discuss a "Defeat Lindquist" graphic during this same meeting.

20 3.4 Taking into account the facts of this case and mindful of the purpose of the
21 Code of Ethics as set out in PCC 3.12.010, the Commission concludes that the facts in this
22 case support the conclusion that the conduct of Mr. Washam violated PCC 3.12.030 I.

23 3.5 Under PCC 3.12.090 A, the Commission may impose a civil penalty of up to
24 \$500, or an amount not exceeding three times the economic value of anything received or
25 sought in violation of PCC 3.12, whichever is greater. The Commission may also order the
26

1 respondent to pay any damages sustained by the County which are caused by the conduct
2 constituting the violation.

3 3.6 Based upon the facts in the record, the Commission imposes a civil penalty of
4 \$500.

5 **IV. ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered
7 that Dale Washam violated the Ethics Code as outlined above in paragraph 3.3 above. Mr.
8 Washam is assessed a monetary civil penalty in the amount of \$500. Total payment of this
9 civil penalty is due within 45 days of the date of this order.

10 DATED this 23 day of April, 2012.

11
12 
13 Commissioner Mari Kruger-Leavitt,

14
15 _____
16 Commissioner Christopher Gilbert

17
18 _____
19 Commissioner Arthur Schmidt

20
21 _____
22 Commissioner Julie Lindner-Runyan

23
24 _____
25 Commissioner Marlo Oesch

26 **APPEAL RIGHTS**

1 respondent to pay any damages sustained by the County which are caused by the conduct
2 constituting the violation.

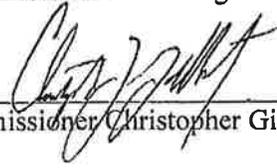
3 3.6 Based upon the facts in the record, the Commission imposes a civil penalty of
4 \$500.

5 **IV. ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered
7 that Dale Washam violated the Ethics Code as outlined above in paragraph 3.3 above. Mr.
8 Washam is assessed a monetary civil penalty in the amount of \$500. Total payment of this
9 civil penalty is due within 45 days of the date of this order.

10 DATED this ____ day of April, 2012.

11
12
13 _____
Commissioner Mari Kruger-Leavitt,

14 
15 _____
Commissioner Christopher Gilbert

16
17 _____
Commissioner Arthur Schmidt

18
19
20 _____
Commissioner Julie Lindner-Runyan

21
22
23 _____
Commissioner Marlo Oesch

24
25 **APPEAL RIGHTS**

1 respondent to pay any damages sustained by the County which are caused by the conduct
2 constituting the violation.

3 3.6 Based upon the facts in the record, the Commission imposes a civil penalty of
4 \$500.

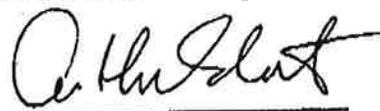
5 **IV. ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered
7 that Dale Washam violated the Ethics Code as outlined above in paragraph 3.3 above. Mr.
8 Washam is assessed a monetary civil penalty in the amount of \$500. Total payment of this
9 civil penalty is due within 45 days of the date of this order.

10 DATED this 24 day of April, 2012.

11
12
13 _____
Commissioner Mari Kruger-Leavitt,

14
15 _____
Commissioner Christopher Gilbert

16 
17 _____
Commissioner Arthur Schmidt

18
19
20 _____
Commissioner Julie Lindner-Runyan

21
22
23 _____
Commissioner Marlo Oesch

24
25 **APPEAL RIGHTS**

1 respondent to pay any damages sustained by the County which are caused by the conduct
2 constituting the violation.

3 3.6 Based upon the facts in the record, the Commission imposes a civil penalty of
4 \$500.

5 **IV. ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered
7 that Dale Washam violated the Ethics Code as outlined above in paragraph 3.3 above. Mr.
8 Washam is assessed a monetary civil penalty in the amount of \$500. Total payment of this
9 civil penalty is due within 45 days of the date of this order.

10 DATED this _____ day of April, 2012.

11
12
13 _____
Commissioner Mari Kruger-Leavitt,

14
15 _____
Commissioner Christopher Gilbert

16
17 _____
Commissioner Arthur Schmidt

18
19 
20 _____
Commissioner Julia Lindner-Runyan

21
22
23 _____
Commissioner Marlo Oesch

24
25 **APPEAL RIGHTS**

1 respondent to pay any damages sustained by the County which are caused by the conduct
2 constituting the violation.

3 3.6 Based upon the facts in the record, the Commission imposes a civil penalty of
4 \$500.

5 **IV. ORDER**

6 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered
7 that Dale Washam violated the Ethics Code as outlined above in paragraph 3.3 above. Mr.
8 Washam is assessed a monetary civil penalty in the amount of \$500. Total payment of this
9 civil penalty is due within 45 days of the date of this order.

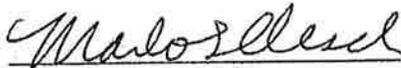
10 DATED this 23rd day of April, 2012.

11
12
13 Commissioner Mari Kruger-Leavitt,

14
15 Commissioner Christopher Gilbert

16
17 Commissioner Arthur Schmidt

18
19
20 Commissioner Julie Lindner-Runyan

21
22 
23 Commissioner Marlo Oesch

24
25 **APPEAL RIGHTS**

1 Pursuant to PCC 3.12.080 M, any person found, by final written order of the
2 Commission, to be in violation of the Code of Ethics may appeal the Commission's decision in
3 the manner and form as provided by State law.

4 **ENFORCEMENT OF FINAL ORDER**

5 Pursuant to PCC 3.12.080 N, if no appeal is perfected within the 30 calendar days
6 following the date of the Commission's final order, and voluntary compliance with the order
7 does not occur, the County Prosecutor shall petition in Superior Court for enforcement of the
8 Commission's order in a manner patterned after that which is currently provided for
9 enforcement of orders entered by the State Public Disclosure Commission in RCW 42.17.397.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATION OF MAILING

This certifies that a copy of the above Final Order was served upon the parties by forwarding a copy by registered mail via the United States Postal Service, addressed to the following:

Richard Wooster
Kram & Wooster, P.S.
1901 South "I" Street
Tacoma, WA 98405

State of Washington)
County of Pierce) ss.

I certify that I have this day served a copy of this document upon the party listed above by mailing a copy thereof, via registered mail, properly addressed and postage prepaid, to the party to the proceeding or his or her attorney or agent.

Tacoma, Washington, this ____ day of April, 2012.

Mari Kruger-Leavitt
Ethics Commission Chair