

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

TENTATIVE RULING

Judge Donna Geck

Department 4 SB-Anacapa

1100 Anacapa Street P.O. Box 21107 Santa Barbara, CA 93121-1107

CIVIL LAW & MOTION

County of Santa Barbara vs Civil Service Commission etc

Case No: 1440046

Hearing Date: Fri Jan 09, 2015 9:30

Nature of Proceedings: Writ of Mandate

As set forth in the decision of respondent Civil Service Commission of Santa Barbara County ("Commission"), real party in interest Grady W. Williams appealed from his dismissal as a Program Business Leader with the Santa Barbara County General Services Department ("GSD"). The Commission held a hearing on November 13, 2013. The Commission concluded that the dismissal of Williams was not justified under the circumstances, reversed the discipline imposed on him, and ordered that petitioner County of Santa Barbara reinstate Williams to his position, with full back pay, benefits and interest. The decision was signed and served on Williams and County on November 21, 2013.

On February 14, 2014, County filed its petition for writ of administrative mandamus to set aside and vacate the decision of the Commission. The County argues: 1) The Commission erroneously interpreted B&P Code § 6787(h) by finding that Williams did not knowingly misrepresent himself as a professional engineer in violation of California law, and by finding that the evidence did not show his use of the "P.E." designation might lead to the belief that he was a licensed engineer in California. 2) The Commission abused its discretion by finding that Williams's criminal conduct did not warrant any discipline at all. 3) The Commission's failure to provide adequate findings invalidates the decision. The Commission did not cite supporting evidence for its findings.

On March 25, 2014, Williams filed a cross-petition for writ of mandate asking the court to set aside an erroneous ruling on Williams' statute of limitation defense under Civil Service Rule 1214, which requires service of a notice of disciplinary action within one year after the cause for discipline first arose. The Commission ruled the defense lacked merit because of the continuous accrual doctrine. (The Commission did not base its ruling on the continuing violation doctrine.) Williams also asks the court to mandate that the Commission hear his motion for attorney fees. In the alternative, he asks the court to hear

the motion for fees.

On March 26, 2014, Williams filed a complaint against County for wrongful termination. The court has related the two cases.

Facts and Proceedings Before the Commission:

Notice: On June 24, 2013, the County General Services Department (“GS”) sent a notice of proposed disciplinary action – dismissal from County service – to Williams. It was based on a disciplinary report from the County Human Resources Department (“HR”). The causes for termination were that Williams held himself out as a professional engineer by using the designation “P.E.” during his employment with County. He is a licensed professional engineer in Washington, but not California. For a short time, he used a qualification that he was licensed in Washington. He has been confronted about using the “P.E.” designation but continued to use it. [Administrative Record (“AR”) 177-180] Williams was placed on administrative leave pending investigation on June 10, 2013.

The HR Investigation Report dated June 20, 2013: HR interviewed Williams, County Architect Robert Ooley, Asst. Public Works Director Tom Fayram, and former GSD Director Bob Nisbet. [AR 181] Ooley and Fayram provided documentary evidence as did Public Works Director Scott McGolpin and current GSD Director Matt Pontes. [AR 182]

Williams acknowledged that he used the P.E. designation on his business card and e-mail signature line and possibly on County letterhead and signatures lines on various contracts he has signed as a County employee. He had used an asterisk and information that he was licensed in Washington but could not recall when he stopped using that. He said that, when he first started with County in 2002, he asked his supervisor if he should use the P.E. designation and was told to do so but that he should always make clear he was not licensed in California. He believes this was either Ooley or Nisbet. He made it clear when he was hired that he was not licensed in California. [AR 182-183]

Ooley said he did not tell Williams to use the P.E. designation. When he supervised Williams, he knew he was not licensed in California, but licensure was not a requirement for his position. He confronted Williams about using the P.E. designation, as did Fayram in or around 2009. [AR 183]

Fayram recalled the subject of Williams’ use of P.E. came up at a meeting where Williams was present. Fayram is a licensed professional engineer. He told Williams the P.E. designation was not correct and told him there were disciplinary consequences from the state. He believed he saw Williams use the P.E. designation in 2005 and expressed concerns to Williams then. [AR 183-184]

Nisbet did not recall telling Williams to use the P.E. designation. [AR 184]

Williams was interviewed a second time. [AR 184] He recalled getting a phone call from Fayram who suggested it might not be appropriate to use P.E.. He also called the state licensing board and the woman he spoke with said she would not recommend it but, as long as he was not a practicing engineer, use of P.E. was benign. This could have been in 2011. [AR 184-185] He could not recall this coming up in a meeting or if he was ever told his use of P.E. was misleading, unethical or a violation of the B&P Code. [AR 185] Asked why he didn't tell his interviewers that he was advised not to use P.E., Williams said he answered the questions asked and did not recall at the time if he was told it was not a good idea. He said he told his former supervisor Paddy Langlands and his present supervisor Matt Pontes that he was licensed in Washington, not California. [AR 185-186]

HR Findings: Williams was not licensed as an engineer in California, yet he used the P.E. designation on e-mails and other forms of correspondence and on contracts and documents developed within the course and scope of his County employment. The North County Jail contract Williams was charged with administering states that County chose "a Capital Projects Division Manager, a professional engineer, with a Master of Science degree in engineering and 30 years of experience" to be construction administrator and over-all project manager. Williams knew or should have known that the terms of the contract would be construed under the laws of the state in which it was written and that he was a party to a material misrepresentation of facts. Neither Nisbet nor Ooley confirmed giving Williams an instruction to use the P.E. designation. At his first interview, Williams did not say that both Ooley and Fayram told Williams that using the P.E. designation was improper and a violation of the B&P Code. At his second interview, Williams indicated that Fayram had mentioned that the use of the P.E. designation might be of concern. [AR 186]

Williams indicated he phoned the state licensing board and was told his use of P.E. was not a significant problem but he could not remember the name of the person to whom he spoke or when he had the conversation. HR found Ooley and Fayram's testimony to be credible and Williams testimony regarding what they said was not credible. HR felt strongly that Williams knew he should not continue to use P.E. after two coworkers who are professionally licensed in California told him it was a violation of law but Williams continued to do so. [AR 187] Ooley and Fayram provided e-mails substantiating that they brought the issue to Williams' attention. McGolpin supported that Fayram had spoken with him about confronting Williams on the issue. [AR 187]

At the second interview, Williams said he had contacted the state and was told he could not use the P.E. designation without clarifying that his license was not in California. [AR 187]

HR concluded that Williams knowingly and willingly violated the B&P Code by continuing to use the P.E. designation after being confronted by Ooley and Fayram and being told by the state that it was not proper. Williams was not forthcoming and truthful at his first interview. [AR 187]

HR found cause for disciplinary action under these subsections of County Civil Service Rule 1203:

- a. Willful or negligent violation of the provisions of the Civil Service law or of these Rules, or other applicable written and published departmental rules, regulations, and policies which do not conflict with these Rules.
- b. Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned tasks or failure to discharge duties in a prompt, competent, and responsible manner.
- c. Refusal to accept a reasonable and proper assignment from an authorized supervisor; insubordination.
- k. Conduct by a County officer or employee which discredits the County or which is incompatible with the due and faithful discharge of his or her duties.
- o. Statements or conduct, or both, tending to interfere with the reasonable management and discipline of the County or any of the departments and divisions.

HR concluded that Williams “was untruthful and therefore insubordinate in both of his interviews.” [AR 187-188]

HR recommended dismissal. [AR 188]

Board of Professional Engineers, Land Surveyors, and Geologists (“State Board”): County Executive Chandra Wallar filed a complaint with the State Board regarding misrepresentation for the P.E. designation while employed with County without noting that he is licensed in Washington. By letter dated October 31, 2013, the State Board informed Wallar that Williams confirmed he is aware of laws prohibiting use of P.E. without noting that his license is held in Washington. The case was closed. Williams was advised to ensure the proper notation and that future complaints could result in action against him.

Commission Hearing: On November 13, 2013, the Commission held its hearing on Williams’ appeal of his dismissal. The Commission first dealt with Williams’ contention that County Civil Service Rule 1214, which reads, in pertinent part:

1214. Statute of Limitations.

No disciplinary action shall be valid against any County employee for any cause for discipline based on any provision of the initiative ordinance or Civil Service Rule, unless the Notice of Disciplinary Action is served within one (1) year after the cause for discipline, upon which said Notice is based, first arose.

Williams contended the cause for discipline first arose in 2002 when he first started using the P.E. designation and any discipline based on that conduct during his 11 years of service is time-barred by the one-year limitation. The hearing officer determined that the

continuous accrual doctrine applies and County could pursue disciplinary action based on Williams' use of P.E. for the one-year period before the notice of proposed disciplinary action. The officer also found that Williams' use of P.E. throughout his employment was admissible to provide context and as potentially relevant to show knowledge and intent. Also, County charged Williams with insubordination for allegedly lying to investigators, which is a separate and distinct offense that independently triggered the limitation period and involved disputed factual questions the Commission must resolve. [AR 335:5-337:15]

At the outset, it was established there were no performance issues. County was not claiming that Williams performed engineering duties. And Williams' performance evaluations were good. [AR 350:2-351:8] It was also established that there was no communication to Williams to stop using P.E. or use an asterisk. [AR 352:13-353:14] It was stipulated that no position Williams held required a professional engineer license. [AR 376:11-23]

Williams testified: He is a licensed professional engineer in the state of Washington. [AR 356:1-3] In 2002, he took the California professional engineer exam and did not pass. [AR 356:4-357:8] He informed Ooley that he did not pass. [AR 357:9-17] Ooley told him it didn't matter because his job didn't require it. [AR 358:21-359:2; 387:5-21] Fayram twice spoke to him about the use of P.E. in his title. [AR 359:3-7] The first time was in 2005 and the second time in 2011. [AR 360:1-7] The first time, Williams went to his supervisor, Ooley, and Ooley said it wasn't a problem. [AR 360:13-361:1] Ooley did not tell Williams it was improper. [AR 364:6-7] Williams did not independently verify whether it was appropriate to use P.E. [AR 361:20-23] Ooley started off using the P.E. designation for Williams and continued to do so. Williams followed suit. [AR 362:5-10] Ooley encouraged Williams to use P.E. [AR 446:7-15] When Fayram brought up the use of P.E. in 2011, he was upset with the project Williams was managing. At that point Williams told his supervisor, Paddy Langlands. [AR 362:22-363:18]

After Fayram said something in 2011, Williams started using an asterisk in his e-mails, noting that he was licensed in Washington. [AR 365:9-21, 416:16-419:17] He called the business and professions board and was told it was "benign." [AR 365:22-366:22] He does not recall to whom he spoke. [AR 366:23-367:2] In 2013, he contacted the state again and was told he could put P.E. in his title but would have to indicate that he was not licensed in California. [AR 367:3-24]

Prior to his termination, Williams was the manager of the North County Jail project. [AR 368:13-19] He was responsible for bringing contracts for that project to the Board of Supervisors. [AR 368:20-370:6] The agreement with the State of California was a template the State had prepared and gave to the County to fill in the blanks. Williams provided information on the project scope, budget and schedule. He was responsible for leading the team, hiring consultants, establishing the budget, keeping the project on schedule. [AR 370:16-371:21]

Williams previously worked with the Army Corps of Engineers. They told him to use P.E. in his title no matter where he worked for them. The Goleta Water District knew he was licensed in Washington and created a business card with P.E. on it. [AR 378:1-24] It was never raised as an issue. [AR 380:7-12]

When he applied for a job with the County, in his cover letter to Ooley, he said he was licensed in Washington and was scheduled to take the California exam. [AR 381:6-24] His application indicated his Washington licensure. [AR 382:2-16] At the interview it was discussed that he was going to take the California exam and that he was applying for the position of project manager, not engineer. They said, "That's understood, and that's fine." Ooley was at that meeting. [AR 383:7-18]

Ooley's June 26, 2002, letter offering employment was addressed to "Grady W. Williams, P.E." [AR 046, 383:19-384:3; Exhibit 5] The contract the County prepared includes the P.E. designation. [AR 047-055, 384:21-386:1; Exhibit 6] The July 3, 2002, Board of Supervisors agenda letter used the P.E. designation after Williams' name. Williams had no part in preparing that. [AR 056, 387:22-388:19; Exhibit 7] Other documents were presented to the Commission that were prepared by others at the County, including Ooley, and included the P.E. designation. [AR 058-085, 105, 390:2-399:17, 405:13-406:22; Exhibits 8, 9, 11, 12, 13, 14, 18] Williams applied for another position using "P.E." and adding "Professional Engineer, Washington." [AR 086-103, 399:18-404:12; Exhibits 15, 16] GSD letterhead in 2008 referred to "Grady Williams, PE, Capital Projects Manager," showed Nisbet and director and Langlands as Asst. Director. Williams did not participate in putting that letterhead together. [AR 104, 404:14-405:12, Exhibit 17] Ooley modified a letter Williams drafted but made no alteration to the P.E. designation. [AR 110-111, 419:18-421:9; Exhibit 25] Ooley never reprimanded Williams for using the P.E. designation. [AR 421:10-422:25] The County sometimes paid to renew Williams' Washington professional engineer license. [AR 433:4-434:6]

The North County jail project is the biggest project in the County's history, with a projected cost of \$96 million. In late 2007, Williams began as project manager. [AR 406:23-407:21] At a "Red Team" meeting with County and State officials, including Leslie Heller (sp?) of the Board of State and Community Corrections, someone suggested that Williams was able to do something as a professional engineer and Williams made it clear that he is not licensed in California, only Washington. [AR 409:2-410:23] Commander Thomas Jenkins (ret) was the Sheriff's designee on the project for seven years. He recalls the meeting where Williams clarified that he was licensed out of state. [AR 169-171; Exhibit 34] The covers for applications to the State for jail project funding state that Williams is the project manager and he is a professional engineer licensed in Washington. [AR 106-109, 411:8-415:21; Exhibits 19, 20]

In February 2013, Williams prepared an e-mail announcing Celeste Manolas becoming manager of capital projects while he focused on the jail project. He mentioned that she is an architect. Ooley wrote him and told him to be careful about referring to her as an architect as one can only use the term architect or engineer if licensed in California. Manolas holds an architecture degree but is not licensed. He said that licensed architects take offense to the reference "much like, I am sure, you would if someone referred to themselves or introduced by someone as an Engineer, when in fact they are not." Williams immediately responded: "My apologies. You are correct." [AR 115-116, 423:21-426:7; Exhibit 27]

Williams' performance evaluations were at or near the very top rating of "exceptional

performer.” He was using the P.E. designation during that time. [AR 434:9-435:15]

Williams was surprised by the HR investigation and did not know what it was about. He cooperated. Between the first and second interviews, he remembered other things because he now knew what it was about. [AR 435:16-438:13] About a month after the County dismissed him, he was contacted by the State about a complaint, there was no discipline and the case was closed. [AR 438:14-441:6] The complaint was filed by the County CEO and it was about the alleged misrepresentation of P.E. status. [AR 252; Exhibit F] The State’s October 31, 2013, letter to the County CEO indicated that it has received confirmation that Williams is aware of the laws prohibiting misrepresentation of the use and title of professional engineer and P.E. without notation that his license is in Washington. Williams has been advised to ensure that he notes his license is in Washington and future complaints could result in action being taken against him. [AR 252, 455:5-17; Exhibit F]

If given his job back, Williams would use the asterisk and note that his license is in Washington. [AR 454:16-21]

County Architect Ooley testified: Ooley was part of the original panel that hired Williams, knew he was licensed in Washington, and prepared documents to go to the Board of Supervisors referring to him as a P.E. because he is a P.E. in Washington. [AR 462:25-463:22] Ooley did not order or approve business cards for Williams. [AR 465:10-466:4] Williams did not tell him he failed the California P.E. exam. [AR 466:12-19] He did not encourage Williams to use P.E. after his name. [AR 466:20-23] He did not tell Williams not to do it. [AR 466:25-467:1] Williams did not tell Ooley about Fayram contacting him about use of P.E., but was aware of “scuttlebutt going around the office” that Fayram was upset with Williams for using P.E. [AR 467:16-468:5] He does not believe he would have said it was no big deal for Williams to use P.E. [AR 468:9-12] He could not recall approving a request for reimbursement for Williams’ Washington license. [AR 468:18-21] Ooley corrected Williams when he referred to an individual as an architect. She had a degree in architecture and was not licensed. [AR 115-117, 469:1-470:17; Exhibit 27]

Ooley recalled having an exchange with Williams about use of P.E. but he searched his e-mails and could not find one. [AR 471:11-473:24] The e-mail exchange regarding Williams’ reference to Ms. Manolas as an architect was not intended to tell Williams he was doing something improper by referencing the word “engineer.” [AR 474:5-14] He received countless e-mails from Williams with P.E., knew it was unethical and illegal, and did not say a word about it. [AR 475:4-16] Ooley acknowledged referring to Williams as P.E., including to the County Board of Supervisors. [AR 475:19-476:15, 481:16-482:21] He drafted contracts referring to Williams as P.E.. [AR 476:24-477:11] There is nothing misleading about Williams in the applications to the State for jail funding. [AR 483:6-484:1]

Williams became Ooley’s supervisor in approximately June 2006. Williams disciplined him on two occasions and Ooley was demoted. [AR 485:22-487:25]

Nisbet Declaration: Ooley or Nisbet was responsible for the content of Williams’ initial business cards. [AR 173:18-21] Nisbet does not recall having a conversation with Williams

about the use of P.E. [AR 173:27-174:1] Nisbet reviewed and co-signed Williams' performance appraisals. Williams was an exceptional or at least highly successful performer. Nisbet received a letter from the Sheriff that was very complimentary of Williams' performance on the jail project. [AR 174:10-14]

GSD Director Matthew Pontes testified: Pontes started with the County on April 15, 2013. [AR 495:25-496:2] At some point during the North County jail project, "somebody" asked if Williams was a licensed P.E. in California. [AR 500:23-501:12] He inquired of Williams why he didn't get licensed as a P.E. in California and Williams said it was not a requirement for the job. [AR 503:21-504:23] Pontes referred the matter of Williams' P.E. licensure to HR because he "heard reports that people were asking about Grady Williams and whether or not he actually was licensed in the State of California." He did not know who was asking those questions. [AR 505:3-18] He said Williams used P.E. after his name in introductions at a jail project meeting – a highly visible meeting. [AR 505:18-506:1] He knew that violated some state law. [AR 506:20-25] It is Pontes' job to know what liabilities are out there. [AR 506:1-3] He did not want to have a newspaper report that an 80 million dollar project grant was at risk "due to fraudulent project manager 'PE'." He was concerned the County had misrepresented itself in state contracts, to the media, and to outside agencies. [AR 507:15-20]

Pontes decided to terminate Williams to make sure the department was dealing in a fair, equitable and honest manner. [AR 510:11-20]. The factor indicating termination instead of progressive discipline was that Williams previously used the qualifying asterisk next to P.E. but stopped, so he knew the difference between right and wrong. [AR 511:16-512:7] Williams acknowledged that the County had not "toed the line" as well as he would have liked and did not insist on qualifying the P.E. designation. [AR 512:19-513:2]

County CEO Chandra Wallar asked Pontes to ask Williams about his P.E. designation after the Red Team meetings she participated in. [AR 514:5-7, 515:5-17] She did not tell Pontes who asked her about his engineer status. [AR 515:18-516:8] Pontes acknowledged that there has been no liability of the County as a result of Williams' use of P.E. but that "continual use of the 'PE' designation by staff that is – that is not true is a liability." [AR 516:18-517:24] Up until Williams' dismissal, the jail project was done properly and was on time. The State and Sheriff were satisfied with Williams' work on the jail project. [AR 518:2-13] Pontes acknowledges that Williams had excellent or "above standard" reviews, though Pontes could not say what Williams' rating was. [AR 518:14-519:13] Pontes did not contact the State's point person on the jail contract to determine if she cared that Williams put P.E. next to his name. [AR 520:20-25] There was no State determination that Williams had done something unethical or illegal and the State did not investigate until Wallar complained. [AR 522:2-10] When asked whether an asterisk would remedy the problem, Pontes said when he "posed termination," he did not know how aggressive the state would be regarding violations. [AR 524:2-9] Pontes could not say whether the County had given Williams clear guidance on what to do in this regard. [AR 525:8-19] Pontes acknowledged that the HR report said that Ooley and Fayram provided e-mails substantiating that they brought the issue to Williams' attention but there were no such e-mails provided. [AR 526:11-529:15]

The actual jail contract refers to Williams as a P.E. without qualification. [AR 232, 530:13-533:4]

Commission's Decision: The Commission reiterated the hearing officer's conclusions about the statute of limitation issue discussed above. [AR 274:2-15, 278:9-289:22]

The Commission unanimously determined that Williams' dismissal be reversed and Williams' conduct did not provide the basis for any discipline. [AR 290:2-5] The Commission considered the overall impact of many facts, including specific factual findings:

Williams has been a licensed P.E. in Washington since 1986. While working for the Army Corps of Engineers and Goleta Water District, he was informed that it was appropriate for him to use the P.E. designation. He was under the mistaken but good faith belief that it was acceptable for him to use the P.E. designation in California so long as he did not work as a professional engineer. [AR 291:1-9] Williams informed the County that he was licensed in Washington and did not mislead anyone about the fact that he did not pass the California exam. [AR 291:10-15] He never held a job that required a P.E. license in California. [AR 291:19-20] Throughout his 11 years of employment with GSD, it was well known by his supervisors and those who worked with him that Williams was licensed in Washington only. He displayed his Washington certificate in his office. [AR 291:21-292:3] Throughout his employment, Williams and others in the department used P.E. after his name, including on business cards issued by the department. [AR 292:4-9] Williams was never instructed by a supervisor not to use the P.E. designation and never received any official warning or other discipline indicating it was wrong or improper to use P.E. after his name. [AR 292:10-14] The department's standard letterhead lists his name with the P.E. designation. [AR 292:15-16] Fayram twice confronted Williams regarding his use of P.E. For a brief time in 2011, Williams used an asterisk and explanation. He contacted the state licensing board and was told use of P.E. was benign. [AR 292:17-293:13] During meetings relating to the jail project, Williams clarified that he was licensed in Washington. Documents relating to the jail project refer to Williams being licensed in Washington. [AR 293:14-22] Given the widespread knowledge within the County and with participants in projects, the department did not establish that the P.E. designation might lead to the belief that Williams was licensed in California. [AR 294:1-6] Pontes mistakenly believed that Williams had knowingly misrepresented himself as a P.E. licensed in California; mistakenly relied on an uncorroborated statement that Williams had been notified in writing not to use the P.E. designation; and mistakenly concluded that Williams discontinuation of the use of an asterisk demonstrated that he knowingly and willfully violated the B&P Code. [AR 294:7-17] Pontes did not list lying during an investigation as a reason for terminating Williams. He speculated that the P.E. designation might result in potential liability. His concerns were unwarranted and unjustified. His claim that he might have been misled by Williams' business card "was not credited given the widespread institutional knowledge that [Williams] was a licensed engineer in Washington, not California." [AR 294:18-295:7] The evidence did not establish that Williams lied during the internal investigation. [AR 295:8-9] Williams' response to Ooley pointing out his mistaken reference to Manolas as an architect demonstrated that Williams was "receptive to feedback and that he acknowledged when he was wrong." [AR 295:10-15] In response to the internal investigation, Williams contacted the California Board for Professional Engineers on June 11, 2013, about his use of P.E. An enforcement program manager informed him he must specify the state he is licensed in if he refers to himself as P.E. Williams intends to follow this advice. This was the first time Williams learned he was required to qualify his use of

P.E. [AR 295:16-296:2] On October 31, 2013, the Board of Professional Engineers notified County that it was closing the case involving the alleged misrepresentation for Williams' use of P.E. while employed with the County. The enforcement analyst indicated Williams had been advised to note that his license is held in Washington if he uses P.E. while in California. [AR 296:3-9] Williams received superior performance evaluations in the three years preceding the dismissal action. [AR 297:1-2]

The Commission concluded dismissal was not justified and reversed the discipline. Williams "shall be reinstated to his position, with full back pay, benefits, and interest, and should otherwise be made whole." [AR 297:4-9]

A. Standard of Review:

This is a petition for writ of mandamus challenging an administrative decision. "The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." CCP § 1094.5(b).

When an administrative mandamus proceeding is initiated by a county in an effort to reinstate a decision to fire an employee, the trial court utilizes the substantial evidence test in reviewing the commission's decision. *County of Los Angeles v. Civil Service Com.*, 39 Cal.App.4th 620, 633 (1995). The court "is not free to substitute its discretion for that of the administrative agency. 'If reasonable minds may differ with regard to the appropriate disciplinary action, there is no abuse of discretion.'" *Id.* at 634 [citation omitted]. The court examines all relevant evidence in the administrative record and views that evidence in the light most favorable to the Commission's decision "resolving all conflicts in the evidence and drawing all inferences in support of the [decision]." *Do v. Regents of University of California*, 216 Cal.App.4th 1474, 1490 (2013). "Only if no reasonable person could reach the conclusion reached by the administrative agency, based on the entire record before it, will a court conclude that the agency's findings are not supported by substantial evidence." *Id.* "The reviewing court is free to determine independently the application of laws, regulations, or procedures." *Apte v. Regents of Univ. of Cal.*, 198 Cal.App.3d 1084, 1092 (1988).

In mandamus proceedings arising from public employment administrative hearings, the trial court is required to exercise its independent judgment of the evidence before the agency. *Thornbrough v. Western Placer Unified School Dist.*, 223 Cal.App.4th 169, 179 (2013). The trial court has the power to make credibility findings. *Id.* The court begins with a strong presumption that the agency's decision is correct and the appellant has the burden of proof to show that the decision was against the weight of the evidence. *Id.* [Citation.] The court "must accord a strong presumption of . . . correctness to administrative findings, and that the burden rests upon the complaining party to show that the administrative decision is contrary to the weight of the evidence." *Fukuda v. City of Angels*, 20 Cal.4th 805, 817 (1999) [internal quotations and citations omitted].

If an agency makes specific findings that are inconsistent with its action, the court's review extends to a de novo comparison of the findings and the decision to determine if the two are inherently inconsistent, i.e., whether it is possible that the one could follow from the other. *County of Santa Cruz v. Civil Service Commission of Santa Cruz*, 171 Cal.App.4th 1577, 1584 (2009). The agency's exercise of discretion to reinstate an employee must be based on reason and will be reversed if it exceeds the bounds of reason. *Id.*

In the context of public employee discipline, "the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[harm] to the public service.' [Citations] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence." *Skelly v. State Personnel Board*, 15 Cal.3d 194, 218 (1975). "The public is entitled to protection from unprofessional employees whose conduct places people at risk of injury and the government at risk of incurring liability." *Hankla v. Long Beach Civil Service Com.*, 34 Cal.App.4th 1216, 1223 (1995).

B. County Petition:

1. *Commission's Interpretation of B&P Code § 6787(h)*: County contends that the Commission based its decision that the County did not prove misconduct on a misinterpretation of B&P Code § 6787(h). First, the court does not believe the Commission based its decision on a failure to prove misconduct but rather found a failure to prove misconduct that warranted discipline under the circumstances. Nevertheless, the court will address County's statutory argument.

B&P Code § 6787(h) provides that a person is guilty of a misdemeanor:

Who uses the title, or any combination of that title, of "professional engineer," "licensed engineer," "registered engineer," or the branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or "engineer-in-training," or who makes use of any abbreviation of that title that might lead to the belief that he or she is a licensed engineer, is authorized to use the titles specified in Section 6736 or 6736.1, or holds a certificate as an engineer-in-training, without being licensed, authorized, or certified as required by this chapter.

Williams does not dispute that "P.E." is an abbreviation for "professional engineer."

The Commission noted that it is a misdemeanor for a person not licensed in California to use the title "Professional Engineer" or "P.E." "in a manner 'that might lead to the belief that he or she is a licensed engineer.'" [AR 274:20-275:3] One Commissioner also demonstrated that understanding of the statute while questioning Mr. Pontes and Mr. Pontes agreed with him. [AR 489:19-491:4] That is not an accurate description of the statute. It is a misdemeanor to use the title professional engineer when not licensed in California and it is a misdemeanor to use an abbreviation that might lead to the belief that one is a licensed engineer. The manner of use is irrelevant.

County says the Commission added to its misinterpretation “by apparently requiring proof that Mr. Williams was ‘knowingly misrepresenting himself.’” [County P&As in Support of Petition 10:8-9] County does not point out a specific finding that evinces this requirement. County confuses the Commission’s discussion of the statute with its discussion of the circumstances surrounding any misconduct.

Any misinterpretation of the statute does not invalidate the Commission’s decision. The Commission did not directly state whether it found Williams had violated B&P Code § 6787(h). The Commission’s decision instead focused on considerations discussed below.

2. The Commission Did Not Abuse Its Discretion by Finding that Williams’ Conduct Did Not Warrant Any Discipline: The “overriding consideration,” in employee discipline cases is “the extent to which the employee’s conduct resulted in, or if repeated is likely to result in, ‘[harm] to the public service.’” *Skelly v. State Personnel Board, supra*, 15 Cal.3d at 218. The Commission properly considered “the circumstances surrounding the misconduct and the likelihood of its recurrence.” *Id.*

In that context, it is clear that the Commission determined that Williams’ use of “P.E.” did not result in harm and is not likely to recur given Williams’ testimony at the hearing and his assurances reflected in the letter from the Board for Professional Engineers, Land Surveyors, and Geologists. First, it is clear from the evidence that Williams’ use of “P.E.” did not cause any harm to County. He made it clear when he was hired and in meetings with State and County officials regarding the jail project that he was licensed in Washington. The written application for jail funding expressly stated that he was licensed in Washington.

County did not demonstrate that any State or County official, other than Pontes, was misled by the P.E. designation. County says Pontes was misled by Williams’ business card. But Pontes did not do anything in reliance on Williams’ use of P.E. (In fact, the Commission expressly found Pontes’ claim that he might have been misled by Williams’ business card “was not credited given the widespread institutional knowledge that [Williams] was a licensed engineer in Washington, not California.” [AR 294:18-295:7]) Yet, only two months and nine days passed from the date Pontes began to work for County to the date of the notice of Williams’ proposed dismissal. [AR 510:9-11, 177] And Pontes only asked Williams about his licensing after Wallar told him to look into it. When Pontes asked, Williams readily told him he was licensed in Washington and not California. [AR 502:1-504:23, 514:5-7] Pontes did not testify that he even noticed the use of P.E. prior to Wallar bringing it up. And Wallar brought it up after attending the “Red Team” meetings. [AR 514:5-7, 515:5-17] It was at a “Red Team” meeting that someone suggested that Williams was able to do something as a professional engineer and Williams made it clear that he is not licensed in California, only Washington. [AR 409:2-410:23]

Pontes only speculated about possible harm from the media taking notice of Williams’ use of P.E. He was asked what consequences would follow if the County “can’t fulfill its end of the agreement with the State.” He said it would jeopardize the grant and the County might have to pay money back. [AR 534:23-535:11] But there is no evidence that Williams’

licensure status would constitute a breach of the jail agreement. “Grady Williams, PE” appears twice in the copy of the contract that is part of the record. [AR 232, 237] He is the “Participating County Construction Administrator.” An exhibit to the contract says: “The County has selected its Capital Projects Division Manager, a professional engineer with a Master of Science Degree in engineering and 30 years of experience” to be the construction administrator and over-all project manager. [AR 236] There is nothing in the contract that says he must be an engineer or that his being an engineer is a material requirement of the contract. The evidence supports the Commission’s finding that Pontes speculated that the P.E. designation might result in potential liability and his concerns were unwarranted and unjustified. [AR 295:2-5]

County attempts to argue that Williams not being a California licensed engineer would constitute a material breach of the jail contract. “If Mr. Williams had remained on the project and the State had subsequently learned he was not a California engineer, it could have deemed this a ‘material breach’ triggering the County’s refund obligation. Regardless of the likelihood of this scenario, Mr. Williams’ misrepresentation of his professional qualifications in the agreement exposed the County to possible multi-million dollar liability.” [County P&A in Support of Petition 12:12-16] But this argument is not grounded in fact or legal analysis and County offers none. As discussed above, there is no term of the contract requiring that an engineer be the County’s administrator. And the State knew he was licensed in Washington as the written application expressly states and as he clarified at a “Red Team” meeting. If, as County suggests, the likelihood of a scenario is irrelevant, there may be any number of immaterial events the State “might deem” material breaches of the contract. That does not mean County can fire every employee involved in those immaterial events.

“Harm to the public service” is not necessarily the same as material harm to the County. Dishonesty and deliberate misrepresentations of material fact would harm the public service. County seems to suggest that a misdemeanor under B&P Code § 6787(h) necessarily constitutes harm to public service. County cites no authority for that proposition. Turning to Supreme Court’s direction in *Skelly*, the court looks to the circumstances surrounding any misconduct.

In this context, the Commission made specific findings about Williams’ use of P.E. Prior employers informed him that it was appropriate for him to use the P.E. designation. Williams was under the mistaken but good faith belief that it was acceptable for him to use the P.E. designation in California so long as he did not work as a professional engineer. [AR 291:1-9] Williams informed the County that he was licensed in Washington, did not mislead anyone about the fact that he did not pass the California exam, and never held a job that required a P.E. license in California. [AR 291:10-15, 291:19-20] Throughout his 11 years of employment with GSD, his supervisors and those who worked with him knew that Williams was licensed in Washington only. He displayed his Washington certificate in his office. [AR 291:21-292:3]

Throughout his employment, not only did Williams use P.E. after his name, others in the department did so as well, including on business cards issued by the department. [AR 292:4-9, 292:15-16] The evidence showed that P.E. appeared on numerous documents that Williams did not prepare. [AR 046, 383:19-384:3, 047-055, 384:21-386:1, 056, 387:22-388:19, 058-085, 105, 390:2-399:17, 405:13-406:22, 104, 404:14-405:12; Exhibits 5, 6, 7,

8, 9, 11, 12, 13, 14, 17, 18] So much of the “misconduct” of which County complains was perpetrated by other County employees.

The Commission’s findings reflect that it was influenced by the fact that Williams’ supervisors never instructed him not to use the P.E. designation and that he never received any official warning or other discipline indicating it was wrong or improper to use P.E. after his name. [AR 292:10-14] A new administrator comes on board and, acting on the County CEO’s instructions, asks about Williams licensure and, within two months, Williams was fired. Instead, County only needed to do what the State Board for Professional Engineers, Land Surveyors, and Geologists did: contact Williams, explain his unqualified use of P.E. was improper, and get his assurance that he won’t do it again. Williams testified that, if given his job back, he would use the asterisk and note that his license is in Washington. [ARE 454:16-21] The Commission found that Williams’ response to Ooley pointing out his mistaken reference to Manolas as an architect demonstrated that Williams was “receptive to feedback and that he acknowledged when he was wrong.” [AR 295:10-15]

County says discipline for use of the P.E. designation in violation of B&P Code § 6787(h) justifies a finding that Williams committed one of the violations charged against him – irresponsibility in discharging his duties, interfering with reasonable management or discipline, or conduct discrediting the County or incompatible with his duties, citing Civil Service Rule 1203 b., k. and o. But, for the same reasons the findings and evidence are consistent with a conclusion that Williams’ conduct did not harm the public service, it did not constitute the causes set forth in the Civil Service Rules cited by County.

County says that, during the HR investigation, Williams was misleading or dishonest about his use of P.E. The Commission found that the evidence did not establish that Williams lied during the internal investigation. [AR 295:8-9] County says that Williams said that his supervisor encouraged him to use P.E. but none confirmed the claim. Ooley is an individual Williams disciplined. He also denied having anything to do with putting P.E. on Williams’ business card but Nisbet’s declaration is inconsistent with that and Ooley did use P.E. with Williams’ name in documents. He testified that he received countless e-mails from Williams with P.E., knew it was unethical and illegal, and did not say a word about it. [AR 475:4-16] He acknowledged referring to Williams as P.E., including to the County Board of Supervisors. [AR 475:19-476:15, 481:16-482:21] The court finds Williams’ testimony is the more credible.

County also says Williams said he did not intend to be misleading and he temporarily qualified the initials but did not disclose that he only did so for three to five months after Fayram confronted him. But County acknowledges that he said it was only temporary and the full context of the two interviews does not reveal any dissembling. [AR 131-134, 157-159]

County claims Williams was dishonest about being informed that his use of P.E. was benign when the State advised against the practice and confirmed that in writing. County is conflating two separate communications. Williams testified about what he was told in 2011 when he called the State Board. County is talking about a letter drafted after County made a formal complaint to the State Board. There is no evidence that Williams lied about

the first conversation. And County leaves out that Williams testified about another conversation he had with someone at the State Board in June 2013 after the HR investigation began. He said that time he was told he could put P.E. in his title but would have to indicate that he was not licensed in California. He acknowledged that this advice was different than the advice he got in 2011. [AR 367:3-24] The record does not reflect any dishonesty. The record supports the Commission's finding regarding dishonesty.

Substantial evidence supports the Commission's findings that any misconduct on Williams' part did not harm the public service and the misconduct is not likely to be repeated. The Commission's findings are consistent with its conclusion to reinstate Williams without further or alternative discipline. The Commission's exercise of discretion to reinstate Williams is based on reason.

3. The Commission's Findings are Adequate: County contends the Commission did not make adequate findings. "[T]he agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 515 (1974). An agency must make basic findings rather than ultimate findings. Basic findings are supported by evidence and ultimate findings flow rationally from the basic findings. *Parkmerced Residents Org. v. San Francisco Residential Rent Stabilization Etc. Bd.*, 210 Cal.App.3d 1235, 1243 (1989). A verdict by the Santa Barbara County Civil Service Commission "shall state the evidence relied upon and detail the reasons for each finding." Santa Barbara County Code of Ordinances § 27-27(d).

Based on the discussion above, the court finds that the Commission's findings adequately bridge the gap between the evidence and the ultimate decision. It does not appear that the case law or the Santa Barbara County Code requires quotation or citation to the record of the proceedings. The court finds and has discussed above several specific basic findings that support the Commission's decision.

4. Conclusion: For reasons stated above, the court concludes that the Commission made no material legal errors, substantial evidence supports the Commission's decision, and the Commission's findings are adequate. Therefore, the court denies County's petition for writ of administrative mandamus.

C. Williams' Cross-Petition: In light of the court's denial of County's petition, Williams' cross-petition for writ of mandate is moot as to the statute of limitation issue.

Williams raised the issue of attorney fees in his petition. He said that the Commission awarded him attorney fees but did not set a hearing on his motion for fees. Nothing in the Commission's decision says anything about attorney fees nor did the court see anything in the record regarding attorney fees. Williams did not discuss the issue of attorney fees in his opening brief in support of his cross-petition or in his opposition to County's petition. The court will not address the matter of attorney fees.

Tentative Ruling:

For reasons stated below, the court denies petitioner County of Santa Barbara's Petition

for Writ of Administrative Mandamus. Cross-petitioner Grady Williams' Petition for Writ of Mandate is moot.

Please note:As a result of staffing limitations, the court has experienced delays in routing time-sensitive documents, including oppositions and replies, for prompt review. To assist the court in avoiding delays, the court has established a generic email address for courtesy copies of law and motion documents to be electronically sent as PDF attachments. The court strongly encourages the parties to email courtesy copies to the court. Instructions for sending courtesy copies are found on the court's website at: <http://www.sbcourts.org/os/tr/CourtesyLM.pdf>