

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Deena Barnes
Respondent.

No. 2015-61

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DEENA BARNES, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

A. STIPULATED FACTS

1. On August 5, 2015, the Executive Ethics Board (Board) received a referral from the Department of Health (DOH) alleging that Deena Barnes (Ms. Barnes), Facility Planner for the Office of Facilities And Business Services (OFABS) with the Department of Health, may have violated the Ethics in Public Service Act by using state computer resources to conduct work in support of her outside business, Barnes Drafting Services. The referral also alleged that she is conducting personal outside business activities with a DOH/OFABS contracted vendor, Intercommunication Network Systems, Inc. (INSI).

2. Ms. Barnes was hired as a Facility Planner 2 by DOH on June 1, 2011 and was in that position for all times pertinent to this investigation.

3. The job duties of a Facility Planner 2 for DOH/OFABS include:

- Provide facility planning and program development assistance for existing or new leased or owned space including formulating, developing, coordinating, planning and layout of DOH facilities;
- Coordinate project activities, with the Division of Information Resource Management (DIRM), the IT department for IT and telephone needs, vendors such as electricians and installers, availability of materials, and customer requirements;
- Prepare and revise drawing and sketches by hand or by using VISIO or AUTOCAD;
- Prepare bids requests and specifications, acceptance letters, purchasing documents, research and write reports.

4. On January 10, 2015, DOH received a complaint alleging that Ms. Barnes was using her state computer for her personal benefit. As a result of that complaint, DOH reviewed Ms. Barnes' work computer and emails for the period of January 1, 2014 through January 26, 2015. DOH internal investigators found several CAD (Computer Aided Drawing) documents that were not related to Ms. Barnes' position at DOH. In addition to the documents, the DOH investigation found emails related to her outside business with INSI (Intercommunication Network Systems, Inc.) and other personal non-work related emails. See detail below:

CAD Drawings (Outside Business)

- Clover Park Elementary School Floor Plans
- Tumwater City Hall Addition Floor Plans
- Thurston County Credit Union Floor Plans
- Thurston County Work release Floor Plans

Emails (Outside Business)

- 19 emails related to outside business with INSI, February 12, 2013 through June 5, 2014.

Emails (Other Personal)

- 42 personal non-work related emails, July 15, 2014 through August 13, 2015.

5. Board staff reviewed Ms. Barnes internet activity on her state computer for the period of December 7, 2014 through August 17, 2015. No inappropriate use of the internet was identified.

6. Ms. Barnes told DOH internal investigators that she has done some side jobs for INSI beginning in 2011. She indicated that she would plot off drawings for them as a favor because INSI did not have a plotter.

7. She indicated that she would bring the drawing in to work on a zip drive. She further indicated that she first started doing the side jobs when someone from IT asked her if she wanted to make some extra money. Ms. Barnes did not reveal the name of the person in the DIRM. Ms. Barnes told the DOH investigator that she would utilize the plotter to draw the drawing on a few occasions but that she did not do it excessively.

8. Ms. Barnes told the DOH investigator that INSI would sometimes send her the drawing via email and if she didn't have them on her zip drive she would open them up with the state's AutoCad program. She would then email them to herself at her personal email address or she would copy them on to her zip drive to open them at home. Ms. Barnes indicated in her response that she had not worked on the drawings at work.

9. Ms. Barnes told the DOH investigator that the drawings were created by someone else; she would just make some updates.

10. On January 30, 2014, Ms. Barnes sent an email to INSI with an attached W-9 tax form. Ms. Barnes told the DOH investigator that INSI needed the W-9 tax form to pay her directly for the work that she completed for them. She further stated that she was a single mother and needed the extra income.

11. DOH investigators asked Ms. Barnes if she completed outside work for any other company besides INSI. Ms. Barnes stated only INSI and added that the first time she did a side job for INSI they didn't pay her directly, it went through a person in IT. Ms. Barnes told DOH investigators

that she had only received two or three checks from INSI and that they were not excessive amounts, only a couple of hundred dollars each.

12. In a response to Board staff, Ms. Barnes indicated that she sent four or five emails from her work computer to an outside vendor (INSI) who she was doing two side jobs for. According to Ms. Barnes, INSI sent her drawings of the buildings in AutoCAD, she would then copy them from her work computer onto a zip drive. She indicated that she would take the drawings home to complete the work. After she completed the project should would copy them back onto her zip drive, take them back to work and email the completed drawings back to INSI.

13. Ms. Barnes indicated in her response to Board staff that she did not do any of the drawing work on work time and that she was unaware that her actions were a violation of the ethics laws.

14. Ms. Barnes has the authority to make purchase requests to have INSI perform work that OFABS personnel could not complete, or, if she believed it was more cost effective to have an outside vendor such as INSI complete the work.

15. Ted Martin (Mr. Martin), Ms. Barnes' supervisor, told Board staff that INSI was the original installer in most of the DOH facilities and that DIRM preferred that INSI be used when an outside vendor is required for new installation or for a remodel where wires or cable are involved.

16. Ms. Barnes told DOH investigators that she believed that INSI had a contract through DIRM and that they were told by DIRM to go directly to INSI to get quotes. Ms. Barnes believed that she was required to use INSI.

17. Ms. Barnes' supervisors at DOH indicated that the use of state resources had been discussed at staff meetings but could not recall the last meeting where that happened. DOH training

records shows that Ms. Barnes had not received formal ethics training from DOH prior to this complaint.

18. Ms. Barnes told DOH investigators that she attended ethics training when she worked at the Employment Security Department (ESD).

19. As a result of these violations Ms. Barnes received a suspension from work and loss of pay for one week effective May 17, 2015 through May 23, 2015.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, Ms. Barnes conducted activities incompatible with her public duty by conducting personal business with a state vendor that was used by DOH, in violation of RCW42.52.020

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges for themselves or others. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, Ms. Barnes secured special privileges and provided a special privilege to INSI, in violation of RCW42.52.070.

5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their private benefit. RCW 42.52.160(1) states:

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

6. Based on the stipulated facts above, Ms. Barnes used state resources for her private benefit and gain in violation of RCW 42.52.160

7. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Ms. Barnes received a one-week suspension without pay from her agency for violations of the DOH ethics policies.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Deena Barnes and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures

Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. Deena Barnes agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. Deena Barnes further agrees that the evidence available to the Board is such that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. Deena Barnes waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Deena Barnes from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. Deena Barnes, in turn, agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Deena Barnes and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Deena Barnes at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Deena Barnes does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Deena Barnes waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Deena Barnes understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Deena Barnes agrees to pay a civil penalty in the amount of three-thousand five-hundred dollars (\$3,500) for the violations associated with RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that Deena Barnes complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

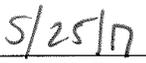
II. CERTIFICATION

I, Deena Barnes, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

DEENA BARNES Date
Respondent

Presented by:

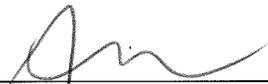
KATE REYNOLDS Date
Executive Director

II. ORDER

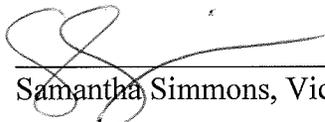
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

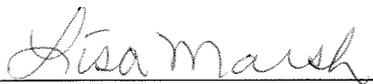
DATED this 14th day of July, 2017



Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Shirley Battan, Member



John Ladenburg, Sr., Member

* I, Deena Barnes, accept/do not accept (circle one) the proposed modification(s).

Deena Barnes, Respondent Date