

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Michael McCourtie
Respondent.

No. 2015-072

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, MICHAEL McCOURTIE, 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 11, 2015, the Executive Ethics Board (Board) initiated an investigation based on an anonymous complaint alleging that Michael McCourtie (Mr. McCourtie), Corrections Specialist 3 with the Washington State Department of Corrections (DOC), may have violated the Ethics in Public Service Act by taking personal time away from work without submitting the proper leave requests.

2. Mr. McCourtie's had been employed by DOC at the Coyote Ridge Corrections Center (CRCC) for more than 25 years. He retired from state service in February 2016. For times

pertinent to this investigation his approved work schedule at CRCC was Monday through Thursday, 6:00 am to 4:30 pm.

3. Part of Mr. McCourtie's duties as a Correction Specialist 3 included regular inmate contact assisting and counseling them with grievances. These duties required him to enter secured areas of the facility, which he would do after arriving at the facility. The security process required Mr. McCourtie to enter his individual code to gain access to keys for his office and other secured areas. The KeyWatcher system logs and records each time staff enters their code to retrieve and return their keys upon entering or exiting the secured areas.

4. Board staff reviewed the KeyWatcher data from September 2013 to September 2015 and noted that Mr. McCourtie consistently logged in and retrieved his keys prior to his 6 AM start time, often logging in as early as 5:30 AM. The data also indicated that Mr. McCourtie consistently returned his keys to KeyWatcher prior to 4:30 PM, with an average return time of approximately 3:00 pm.

5. Mr. McCourtie explained to Board staff, that in addition to his work in the secured areas he had duties that required him to frequent the Minimum Security Unit (MSU), an area that houses geriatric, infirmed or soon to be released inmates. This area could be navigated without going into secured areas that would require Mr. McCourtie to have his keys with him.

6. Mr. McCourtie explained that he would usually return his keys to the secured area so he did not risk forgetting to return them. He would then drive his vehicle, the approximately half mile to MSU to finish his shift. He would leave the facility directly from MSU.

7. Board staff spoke with Assistant Superintendent Andy Sawyer (Mr. Sawyer). Mr. Sawyer confirmed that if duties required staff to work in both the secured areas and MSU it was common practice for many of them to return keys upon leaving the secure area to go to MSU or another unsecured area. Mr. Sawyer told Board staff that it was possible for Mr. McCourtie to

meet with inmates at MSU in unsecured areas where keys were not needed, as long as the area was private enough to allow for confidentiality of the inmate.

8. Mr. Sawyer told Board staff that his duties as Assistant Superintendent did not put him in daily contact with Mr. McCourtie. He confirmed that he saw Mr. McCourtie in MSU often in the afternoons and felt it was his usual pattern to finish out his shift at that location. Mr. Sawyer told Board staff he felt Mr. McCourtie was a very conscientious employee that completed his work and he had never heard any complaints that he was coming to work late or leaving early.

9. After retrieving his keys, Mr. McCourtie would sign an accountability log prior to entering the secured area. Board staff reviewed the data and determined that any date that Mr. McCourtie retrieved/returned his keys through KeyWatcher he also signed in/out at the same time on the accountability log.

10. After reviewing the data from both sources, Board staff determined there was a total of five (5) days in 2015 where Mr. McCourtie did not access the secured facility using either system. The days fell on either a Wednesday or Thursday when it was expected Mr. McCourtie would be at work according to his work schedule. The identified dates were:

- February 26, 2015 (10 hours)
- March 12, 2015 (10 hours)
- April 1, 2015 (10 hours)
- April 16, 2015 (10 hours)
- April 23, 2015 (10 hours)

11. Board staff reviewed leave slips submitted by Mr. McCourtie relative to these dates and determined that he had failed to submit leave for these dates.

12. Board staff reviewed Mr. McCourtie's emails, internet access, training and meeting schedule. Mr. McCourtie's duties required frequent use of email and Board staff noted he regularly sent or responded to approximately 10-20 emails a day. During the five days in

question, there was no email or internet activity. Additionally, Board staff reviewed Mr. McCourtie's training records and meeting schedules for the days but found no activity. As a result of the examination it appears more likely than not that, Mr. McCourtie was paid for 50 hours that he did not work.

13. Mr. McCourtie began FMLA on April 28, 2015. He told Board staff that he could not recall anything in particular, such as a regular scheduled doctor's appointment that would have caused him to miss work and fail to submit the required leave slips. Mr. McCourtie told Board staff that he was also an instructor for CPR training. These courses were typically taught in unsecured classroom buildings located outside the main gate of the facility. Mr. McCourtie thought it was possible since he was the course instructor, perhaps his attendance might not be reflected in his training records.

14. Board staff contacted Mr. Sawyer and asked him to review the dates in question with the DOC training section to see if it was possible Mr. McCourtie was present as an instructor. Mr. Sawyer provided the training cycle for 2014-2015, no DOC in service training was conducted on the dates in question.

15. Mr. Sawyer told Board staff that the dates in question were just prior to Mr. McCourtie beginning his FMLA on April 28, 2015. He speculated that perhaps Mr. McCourtie's health played a role in him forgetting to submit the leave slips, since it had not been an issue prior.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their 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.

2. WAC 292-110-010 Use of state resources states, in part:

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(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, Mr. McCourtie used state resources (time) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, Mr. McCourtie benefitted financially as a result of these violations.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Michael McCourtie 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. Michael McCourtie 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. Michael McCourtie further agrees that the evidence available to the Board is such that the Board may conclude he 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. Michael McCourtie 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 Michael McCourtie 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. Michael McCourtie 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 Michael McCourtie and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 Michael McCourtie 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, Michael McCourtie 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, Michael McCourtie 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. Michael McCourtie agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000).

12. The civil penalty in the amount of one thousand dollars (\$1,000) 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, Michael McCourtie, 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.

Michael McCourtie 3/20/17
Michael McCourtie Date
Respondent

Presented by:

L. Reynolds 3/24/17
KATE REYNOLDS Date
Executive Director

