

Washington State **Executive Ethics Board**



Annual Report for 2008
(January 1, 2008 – December 31, 2008)

December, 2008

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MISSION STATEMENT

To promote integrity, confidence and public trust in state government through education, interpretation and enforcement of the Ethics in Public Service Act.

LEADERSHIP

The Executive Ethics Board is comprised of five members, all appointed by the Governor. The members play a crucial role in the policy setting and enforcement of the Ethics Act.

Judy Golberg (Chair, 1/1/08 – 12/31/08) was appointed to the EEB by Governor Locke in 2004 at the recommendation of State Auditor Brian Sonntag for a term that ends on September 30, 2009. Ms. Golberg was a member of the Richland School Board between 1983-1992. She is a member of the League of Women Voters and served as State President from 2003-2005. Ms. Golberg has been employed in the health care field since 1989.

Neil Gorrell was appointed to the Executive Ethics Board in November, 2005. Neil is a loyal University of Arizona Wildcat undergraduate, earning degrees in Political Science and Philosophy. He received his J.D. from the University of Washington School of Law in 1996. After serving as a law clerk for Judge Elaine Houghton in Division II of the Court of Appeals, he joined the Office of the Attorney General where he focused on civil and regulatory litigation. Neil worked in several divisions of that office, including Labor & Industries, General Legal, Government Compliance & Enforcement, and Torts. Neil was appointed as an Administrative Law Judge in February, 2004. In that capacity he decided cases for a variety of state agencies and local governments. Neil moved to the Employment Security Department in May of 2007, where he currently serves as Deputy Director of the Unemployment Insurance program. In his spare time, Neil has taught courses in civil litigation and administrative law in the paralegal program at the South Puget Sound Community College. He also dotes excessively on his wife and four children.

Evelyn Yenson (Chair, 1/1/07 – 12/31/07) was recommended by then Attorney General Christine Gregoire and was appointed by Governor Locke in 2004. Ms. Yenson was the Washington State Lottery Director from 1987-1997 and Director of the Department of Licensing from 1997-1999. She has worked in the private sector for the past seven years. Her term expired on September 30, 2008.

Linnaea Jablonski was appointed by Governor Gregoire in September 2007 to fill the classified state employee position. Ms. Jablonski has worked for the Office of the Secretary of State since February 2006. Ms. Jablonski received her bachelor's

degree from The Evergreen State College in 2002 and is now pursuing a Master's degree in Mediation and Conflict Resolution.

Mike Connelly is the City Attorney for the City of Spokane Valley. He has been with the City Attorney's Office since August 2005. He is also an adjunct professor at Gonzaga University School of Law and previously served as an adjunct professor at Eastern Washington University. Prior to working for the City of Spokane Valley, he was the City Attorney for the City of Spokane for five years. Mike was appointed as a member of the Washington State Executive Ethics Board in March of 2008. He also was a member of the Public Disclosure Commission from July 2001 to July 2006 and was its Chairman from July 2002 to July 2003. Before working as City Attorney, Mike was in practice as Connelly & Connelly, P.S. and emphasized land use and development law, family law, insurance defense, personal injury and all aspects of civil litigation. During this period of time he also served as the Hearing Examiner for the City of Airway Heights; Pro-tem Hearing Examiner for the City of Pullman, and Pro-tem Superior Court Commissioner for Spokane County. Prior to being with Connelly & Connelly, P.S., Mike was a partner at the law firm of Evans, Craven & Lackie, P.S. with emphasis in insurance defense, civil litigation, employment law, and land use and development law. Mike has been a member of the Washington State Bar Association since 1981. He also served as the former director of the Liberty Lake School Board. Before becoming an attorney, Mike was a Jr. High School Teacher at St. Aloysius. He has lived in the Spokane area his entire life and he and his wife Sue have five children.

Martin Biegelman was nominated by Attorney General Rob McKenna and appointed by Governor Christine Gregoire in November 2008 for a term that expires September 30, 2013. Mr. Biegelman is Director of Financial Integrity at Microsoft Corporation where he leads a global fraud detection, investigation, and prevention program. He is a former federal law enforcement professional having served as a United States Postal Inspector in a variety of investigative and management assignments. He is both a Certified Fraud Examiner and a Certified Compliance and Ethics Professional and the author of books on fraud prevention, compliance and ethics, and identity theft.

Executive Director Melanie de Leon was appointed to her position by Attorney General Rob McKenna in January 2008. Melanie graduated from the University of Puget Sound with degree in Business Administration. She spent the next 13 years as an Air Force officer. She completed a Master of Arts in Public Administration while in the Air Force. Upon leaving active duty, Melanie became a Quality Manager for a local software manufacturing company and worked her way up to run the manufacturing facility. During this time, Melanie completed her law degree at Seattle University School of Law. She started working for the Attorney General's Office in 2001, prosecuting cases for the Office of the Insurance Commissioner, and then litigated juvenile dependencies and parental terminations. After a brief time as a criminal prosecutor, Melanie became a staff attorney for the Department of Health, working with the Medical and Chiropractic Commissions.

GENERAL INFORMATION

Biennial Budget: \$941,259

Board Members:

Evelyn Yenson (4/1/04 – 9/30/08)
Judy Golberg (1/1/05 – 9/30/09)
Neil Gorrell (11/1/05 – 9/30/10)
Linnaea Jablonski (09/01/07-09/30/12)
Michael Connelly (3/31/08 – 09/30/11)
Martin Biegelman (11/11/08-9/30/13)

Staff:

Melanie de Leon, Executive Director
Ruthann Bryant, Administrative Officer
Sue Jones, Investigator
Nancy Lewin, Investigator
(Vacant---.5 FTE) Office Assistant

Legal Counsel:

Jerry Anderson, Senior Assistant Attorney General, Counsel to
the Board
MB Newberry, Assistant Attorney General, Counsel to Staff
and Chief Prosecutor

Contact Information:

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BACKGROUND

The Executive Ethics Board (EEB) is an independent board made up of five individuals who are appointed by the Governor. The Office of the Attorney General provides staff for the Board. Board members strongly believe in the mission of the Board: improving the public's confidence in state government by ensuring that state officers and employees conduct themselves with the highest ethical and moral standards and they conduct the state's business in a manner that advances the public's interest.

The Board's adopted four new goals for their 2009-2013 strategic plan:

- **Promote knowledge of the Ethics in Public Service Act to all state employees and officers;**
- **Evaluate and improve complaint process;**
- **Develop methods and procedures to evaluate and ensure compliance with the Ethics Act; and**
- **Evaluate staff capacity and training to meet organizational challenges**

The Board Members work aggressively to fulfill these goals.

The Board meets the second Friday of each month, with the exception of August and December when no meetings are held.

Board Activities

Advisory Opinions

The Board issued two Advisory Opinions in 2008:

AO 08-01 answered the question, "May a state employee authorize a wellness organization to sell products during meetings, even if the meetings are held in accordance with the agency's wellness policy?" by stating: No. To allow an organization to sell products simply as a convenience for employees would undermine the Ethics in Public Service Act.

Section 6 of WAC 292-110-010 sets out the activity which is strictly prohibited, regardless of whether the activity fits within the de minimis standard. The section states, in part: "This rule explicitly prohibits at all times the following private uses of state resources.

- a. Any use for the purpose of conducting an outside business or private employment;
- b. Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group..."

The Board believes that the wellness meetings are considered “official state business” because they are intended to promote the well-being of employees. It may benefit the employee to use the official products of the organization, but to have them available at the meetings is merely a convenience to the member/employee. The Board also believes that mere convenience to the employee is not sufficient enough reason to allow state resources to be used for private business gain.

AO 08-02 answered the following questions (with regards to ferry passes only),

1. May a manager, as part of the state’s bargaining team, propose language during collective bargaining that may benefit himself or herself, his or her spouse, or child?
2. May a manager, who on an approved withdrawal from a union after accepting a management position, be a part of the state’s bargaining team with that union when the manager may receive a benefit for himself or herself, his or her spouse, or child because the member has the right to voluntarily revert back to a represented position and receive benefits previously negotiated?

by stating:

1. A manager negotiating on the agency’s CBA team, who had reversion rights to a union position, would not be using their position to give themselves, their spouses, or family members a special privilege if they proposed language during collective bargaining that would allow them to receive a ferry pass without actually reverting back to their prior union position. There is no special privilege they did not already have and that was not already part of the CBA. Retiring managers, on approved withdrawal from the union, have always had the right to a ferry pass by reverting back to the union, so they did not add a new benefit, but merely eliminated the “bumping back” process required to get the ferry pass. In essence, the managers were and are not receiving any new benefit; they were just making the process of conferring a current benefit more efficient.

2. A Collective Bargaining Agreement (CBA) is a tentative agreement reached through a negotiation process made up of several individuals who have no authority to ultimately accept or reject it. In fact the CBA is not binding until the Legislature funds it and the Governor signs it. The collective bargaining process has checks and balances in place to insure that one individual cannot influence the outcome.

Formal Board Advice

1. "Can speakers for a diversity event bring and sell their books/CDs at the event in lieu of receiving a speaking fee?"

The Board discussed this question in the context of their latest Advisory Opinion, 08-01, which stated that Weight Watchers could not sell their merchandise during meetings with state employees in state facilities even though these meetings were part of the agency's wellness program. The Board did not believe that there was any difference in a diversity speaker selling merchandise and Weight Watchers selling merchandise: both were profit seeking entities and both were invited to provide their services to state employees under a state-sanctioned organizational program. Based upon these similarities, the Board voted that Advisory Opinion 08-01 applied to diversity speakers, and it would violate the Ethics Act to allow a diversity speaker to sell merchandise in lieu of payment. These speakers could provide information and/or flyers regarding where to purchase their books/CDs.

2. "Can members of the Interagency Committee for State Employed Women (ICSEW) solicit legislators for donated items to be sold during a silent auction at the committee's conference in May and then give the proceeds to a local charity."

The Board determined that ICSEW members could inform employees of their own individual state agencies of the upcoming silent auction and allow these state employees to voluntarily donate items to the auction if the member's state agency had a policy in place that allowed them to do so. For future activities, the "agency head" of the ICSEW would need to have a policy approved by the Board that specifies the activities of the ICSEW that support organizational effectiveness and delineates what and how state resources can be used for these activities. If these activities include soliciting for charities, the policy should state who can be solicited and provide guidance for this solicitation.

3. "Whether providing notice to state employees of discounts offered by private businesses would be construed as 'promoting' or 'supporting' a business, which is prohibited by the Ethics Act."

The Board voted against posting a list.

4. "Can the Combined Fund Drive (CFD) use state resources to promote or support agency participation in a commercial activity that benefits the CFD?"

The Board interpreted "direct solicitation" as anything that is sent to state employees or is in state facilities that contains specific logos for the commercial organization that is providing the service/product/discount. For example, having containers located in state facilities to collect toner cartridges for resale with the reseller's logo on the container would be considered direct solicitation and would

violate the Ethics Act. However, if the container had no logo on it, or if it was the container of a recycler, not a reseller, it would not violate the Act. The Board also agreed that it would be a direct commercial solicitation for state employees to send out an all-agency e-mail promoting the purchase of a particular product even if the proceeds went to offset a portion of CFD's administrative costs.

5. "Can a faculty member require students to use the faculty's own textbook for the faculty's class and can the faculty author accept royalties from the sale of their book to these students?"

The Board held that a faculty author cannot make a profit on the sale of his textbooks to his students at his own educational institution. This also holds true for faculty members who also own the publishing company who manufactures and ships the books. In that case, neither the publisher nor the faculty author can earn a profit on book sales to the faculty's own students at his own educational institution.

6. "Can state employees living in state provided residences in state parks put political campaign signs in the window of their residences?"

No, the Board held that the residence was a state facility and the state employee resident could not post political signs in the window or yard visible to the public.

Staff Activities

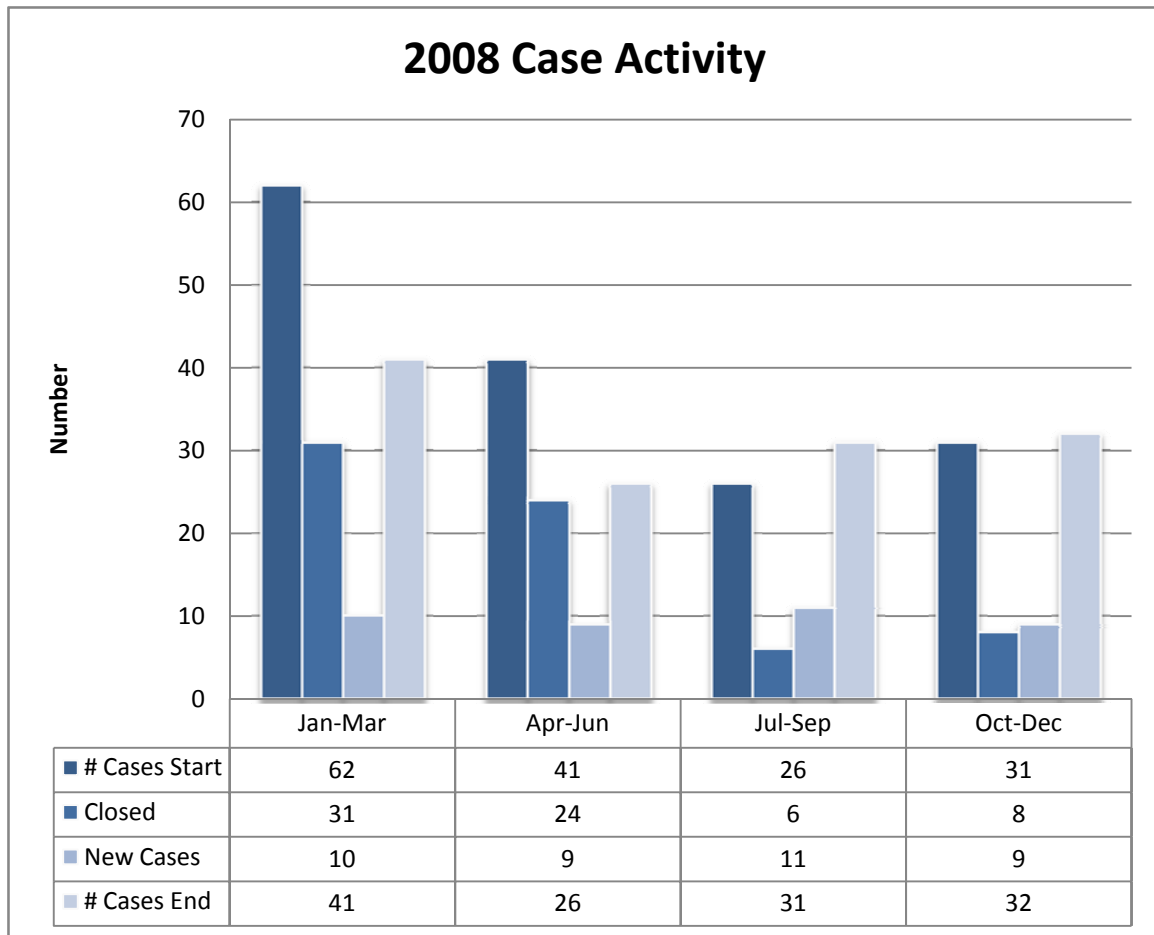
Enforcement Activities

Cases had been tracked on a fiscal year basis, but in January 2008, the EEB Staff started tracking cases on a calendar year basis. Between January 1, 2008 and December 31, 2008, we received 70 new complaints.

The majority of cases brought to the Board resulted in dismissals because the complaint was outside the EEB's jurisdiction, inadvertent and minor, frivolous or unfounded, or was cured by the actions of the agency.

The use of public resources for personal gain was the leading complaint driver for EEB staff. We spent most of our time investigating allegations that state employees or officers improperly used the Internet, email system or computer. The most common misuses that investigations revealed were that employees were:

- visiting inappropriate internet sites;
- storing personal documents (diaries, home mortgage documents, auto details, pictures, bank account information);
- transacting personal business while at work.



The Board accepted stipulated penalties from or imposed penalties on 9 individual state employees as follows:

	<u>Allegation</u>	<u>Violation</u>	<u>Penalty</u>
Employee 1	Used state computer system to send out e-mails regarding her candidacy for an elected office.	RCW 42.52.160 42.52.180	\$2,000
Employee 2	Used the state computer system for running a personal business.	RCW 42.52.160	\$1,500
Employee 3	Made personal phone calls from a state-issued cell phone that resulted in excess charges to the state.	RCW 42.52.160	\$1,200
Employee 4	Used agency-issued cell phone and SCAN code to make personal phone calls.	RCW 42.52.160	\$500

Employee 5	Used the state computer system for a personal business.	RCW 42.52.160	\$750
Employee 6	Used state SCAN access and state issued cellular telephone to make personal calls and pursue personal interests.	RCW 42.52.160	\$500
Employee 7	Used state resources and position for personal benefit and for the benefit of others; used state resources to support an outside organization; gave preferential treatment to family and others in hiring and promotion decisions; and made inappropriate use of the Internet from her state computer.	RCW 42.52.020 42.52.070 42.52.140 42.52.160	\$8,200
Employee 8	Used state resources for personal interests.	RCW 42.52.160	\$750
Employee 9	Streamed music from the Internet for hours at a time; accessed personal email accounts, bill payment websites, shopping sites and news sites from state computer; stored personal photos and personal emails on state computer.	RCW 42.52.160	\$500

Training

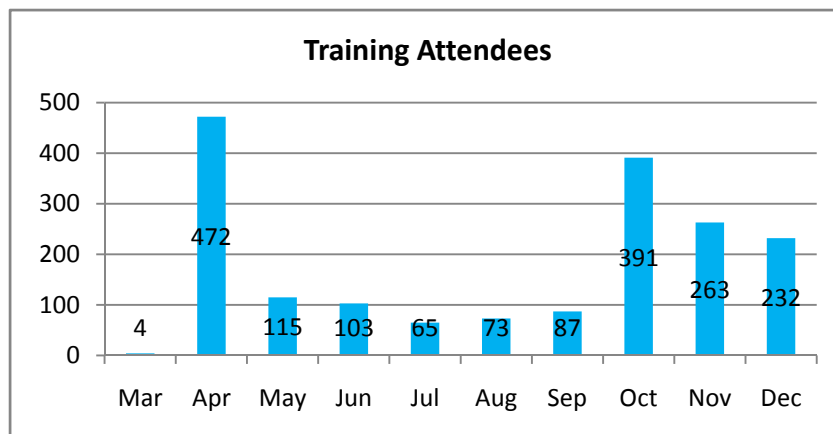
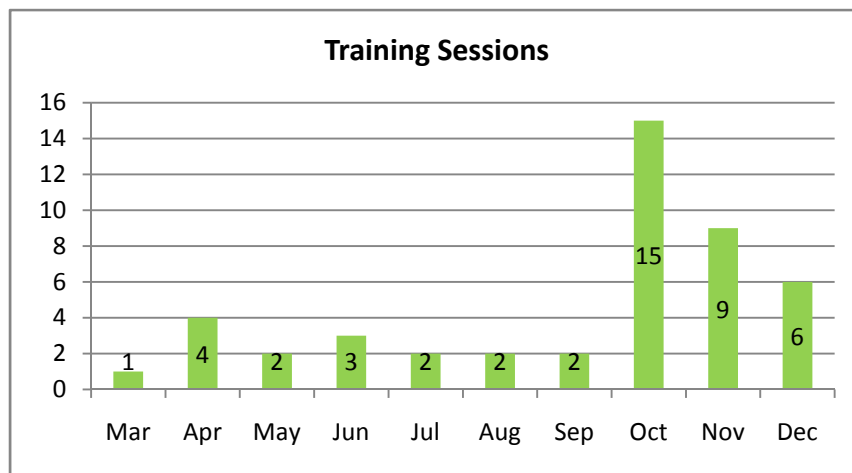
The EEB staff completely revamped the ethics training program. Instead of providing only one type of training, the program now offers many different options to accommodate agency needs. EEB staff are now providing the training themselves and have travelled across the state to train at locations convenient to the agency. The following training is offered to all state employees:

- Ethics 101, On-Site – a 4-hour session designed for a particular agency’s employees and may be customized to address actual issues facing the agency.
- Ethics 101, Recurring - a 4-hour session designed for new state employees or for those who have not had ethics training in the past several years. This

training occurs 6 times a year at a specified location and any state employee may attend.

- 10 things You Need to Know About the Ethics Act – a 90-minute refresher course that highlights 10 sections of the Ethics Act designed for employees who have a basic understanding of the Act. This training is provided to agencies at their location.
- On-line training – a 40 minute, interactive on-line module is being developed and should be launched in Spring 2009. This training will replace the current on-line Ethics Challenge and is designed for those employees who cannot attend other types of training due to remote locations or workload.

Since revamping the training program in April 2008, the EEB Staff has held 46 training sessions across the state and trained over 1800 state employees. The EEB staff also participated in the orientation of new board and commissioner members and in a continuing legal education session for administrative law judges.



Staff initiated a new brochure to give to state contractors that informs them of the ethics regulations state employees have to abide by.

Ethics Advisors Group

Once a month, usually in the week following the Board meeting, staff meets with ethics advisors from different agencies to discuss Board actions during the past Board meeting. These meetings also give the advisors a chance to seek input from others on issues that arise within their own agencies. The EEB Staff made a formal request to Agencies who did not have an ethics advisor to appoint one, resulting in the appointment of 42 new ethics advisors.

Human Resource (HR) Managers Group

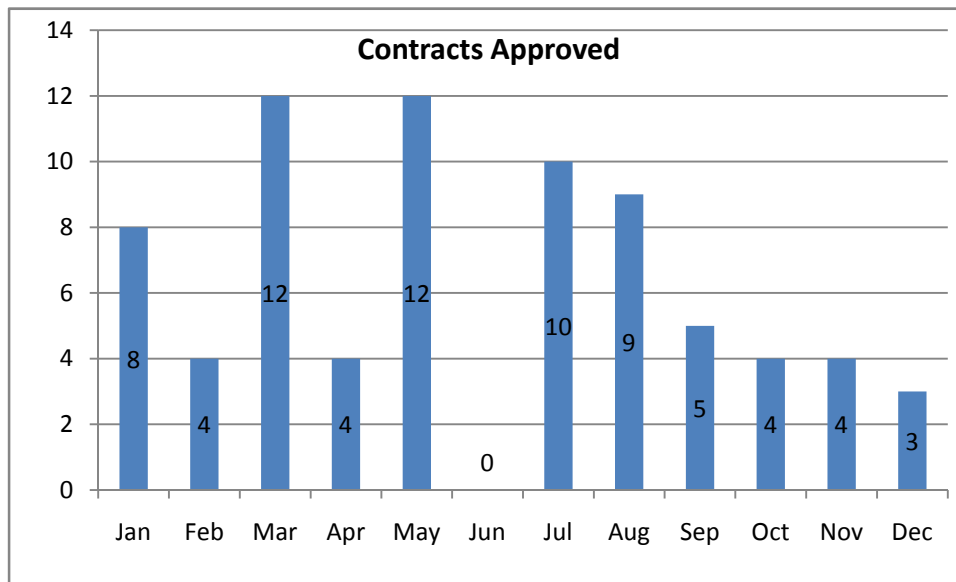
The Executive Director attends the monthly HR Managers meeting to provide information regarding ethical issues, elicit assistance regarding revisions to rules or policies and to gather input regarding training. These meetings have helped get information out to agencies much quicker and have greatly enhanced the relationship and communication between the EEB staff and state agencies.

EEB Newsletter and Tips of the Month

The EEB Staff initiated two new methods of communicating Board activities and advice through the EEB Newsletter and Tip of the Month. The EEB Newsletter is sent to the Ethics Advisory Group, all Assistant Attorneys General and HR Managers after a Board meeting to delineate enforcement actions taken by the Board, advice given, legislative actions pending and rule revisions. This newsletter provides a real-time synopsis of Board actions and keeps agencies informed of any pending issues that they may want to comment on or participate in. The Tip of the Month is sent to the same group, but provides advice regarding one relevant ethical issue, i.e., gifts, campaigning in the workplace, solicitation for charities. These tips are customized to address issues that are pertinent for that particular month or period of time. Both the EEB Newsletter and the Tip of the Month are posted to the Ethics website for public perusal.

Outside Employment Contracts

Per WAC 292-110-060, a state officer or employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received. In 2008, the EEB Director approved 75 contracts.



Process Improvement

In January 2008, the EEB Staff reviewed the procedure used to process ethics complaints and developed investigation timelines for several types of complaints. Using these timelines, investigators now have a clear understanding of the length of time each stage of the investigation should take so that cases do not languish for years. Using the improved process, cases are now processed in a timely manner, each case status is discussed twice a month and no case is left behind. There is now no case backlog and the caseload was reduced by 50 percent.

Legislation/Rule Making

During the 2008 Legislative Session, bills passed that had an affect on the Ethics in Public Service Act include:

ESSB 6570: This bill gave the Department of Fish and Wildlife the option of allowing a ranger’s family member to conduct a private business in their state-owned housing, as long as the commissions adopts a private business activity policy that is approved by the Ethics Board.

ESSB 6776: This bill amended the Whistleblower Act and expanded the definition of an “improper governmental action” to include gross mismanagement and a new section regarding scientific opinions. The bill adds the Board as one of the “public officials” designated to receive reports of improper governmental action and gives the Board 15 calendar days to forward these reports to the State Auditor’s Office.

The Board amended WAC 292-100-045 to allow for Board dismissals (resulting from a statutory change); WAC 292-100-050 for housekeeping purposes; WAC

292-100-150 to provide for the submission of documents so that the documents can be provided to the Board prior to the Board meeting; and WAC 292-100-160 which clarifies the role of an Administrative Law Judge.

The EEB staff began a formal review of all Advisory Opinions to determine if any should be revised or repealed. The EEB Staff is also exploring better ways to publish both formal and informal Board advice to make it easier to find on the website and more readable.

Relationship Between the Office of the Attorney General and the Executive Ethics Board

