

Washington State Executive Ethics Board

Annual Report
2011

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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 are as follows:

- (1) One member is a member of the classified service;
- (2) One member is a state officer or state employee in an exempt position;
- (3) One member is a citizen at large;
- (4) One member is a citizen selected from a list provided by the state auditor; and,
- (5) One member is a citizen selected from a list provided by the attorney general.

Except for initial members and those completing partial terms, members serve a single five-year term during which time they may not hold partisan or full-time nonpartisan elective office, make campaign contributions, or lobby other than on matters relating to the ethics law. The members play a crucial role in the policy setting and enforcement of the Ethics Act.

Mike Connelly, (Served as Chair, January 1 – September 30) retired as the City Attorney for the City of Spokane Valley and is now a partner in a private Spokane law firm. 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 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. Mr. Connelly's term ended on September 30.

Martin Biegelman, (Served as Vice Chair January 1 – 25) 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 was the Director of Financial Integrity at Microsoft Corporation where he led a global fraud detection, investigation, and prevention program. Mr. Biegelman resigned from the Board in January to move out-of-state.

Matthew Williams III, (Served as Vice Chair March 11 – December 31) was nominated by State Auditor Brian Sonntag and appointed by Governor Christine Gregoire in November, 2009 for a term of service that extends until September, 2014. Mr. Williams is a retired Lieutenant Colonel, United States Army, and is a combat veteran of the Vietnam War (Bronze Star recipient) and Panama Incursion. Additionally, he is a tenured member of the U.S. Army Special Forces (*Green Berets*), and was the Senior Intelligence Officer for the 1st Special Operations Command (Airborne), Fort Bragg, N.C. Among his more distinguished military assignments, Mr. Williams was appointed Head of Delegation for NATO Intelligence Issues, NATO Headquarters, Brussels, Belgium, as well as serving as Adjunct Guest Lecturer at the Naval War College, Newport, Rhode Island. He is currently co-owner and educational training consultant with the *Fitz-Williams Group*, University Place, WA. Mr. Williams is a graduate of North Carolina Agricultural and Technical University, Greensboro, N.C., and holds a Bachelor of Science Degree in Business Administration. Moreover, he is a graduate of the Professional Teaching Certification Program at Saint Martin's University, Lacey, WA. He sings professionally in the local area.

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. Mr. Gorrell left the Board in March when a new member was appointed to fill his expired term.

Linnaea Jablonski was appointed by Governor Gregoire in September 2007 to fill the classified state employee position. Ms. Jablonski works for the Department of Corrections. Ms. Jablonski received her bachelor's degree from The Evergreen State College in 2002 and has a Master's degree in Negotiation and Conflict Resolution.

Lisa Marsh was appointed by Governor Gregoire in March 2011. She is the Deputy Assistant Commissioner of the Unemployment Insurance Tax & Wage Administration for the Employment Security Department, which collects and maintains employer tax and wage data and moneys in order to enable the appropriate payment of benefits. Lisa earned her J.D. from the University of Puget Sound School of Law in 1994 and an LL.M. in tax from the University of Washington in 1997; she has been licensed to practice law in 11 jurisdictions. Lisa has been in public service for 25 years, including prior service as an Administrative Law Judge, an Assistant Attorney General, and a

Senior Policy Advisor with the Department of Information Services. She has been recognized with the Governor's Award for Leadership in Management; two US Department of Labor awards: Performance Excellence in Tax Operations and the Unemployment Insurance Innovation Award for Integrity; the Excellence in Government Leadership Award; both state and international awards from the International Association of Workplace Professionals; and the 2011 NASWA James F. Walls Team Award.

Nancy Biery was nominated and appointed by Governor Gregoire in October 2011 to the Citizen-at-Large position for a term extending through September 2016. Ms. Biery has spent the last 20 plus years in the public and private sector, most recently serving as U.S. Senator Cantwell's State Director of Outreach. She also served as Director of External Affairs under Governor Gary Locke during his last term of office. In 2009 she served again under US Commerce Secretary Gary Locke as a Senior Advisor in Washington, DC. Previously, Ms. Biery has owned two small businesses and was a partner in small women-owned business that specialized in public affairs and government relations work. Currently, she works with community and non-profit organizations, local governments and small businesses to help them achieve communication, organizational and operational success. Ms. Biery graduated from the University of California – Irvine. She and her husband own three adorable dogs and reside on the Olympic Peninsula.

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: \$ 772,080

Board Members:

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)
Matthew Williams III (11/7/09-9/30/14)
Lisa Marsh (3/14/11-9/30/15)
Nancy Biery (10/1/11-9/30/16)

Staff:

Melanie de Leon, Executive Director
Ruthann Bryant, Administrative Officer
Sue Jones, Investigator (1/1/11-6/30/11)
David Killeen, Investigator
Phillip Downes, Extern

Legal Counsel:

Bruce Turcott, Assistant Attorney General, Counsel to the Board
Jennifer Elias, Assistant Attorney General, Counsel to Staff
and Chief Prosecutor

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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 major goals for 2011 came from their 2009-2013 strategic plan, however, in the 2011-2013 Operating Budget the legislature mandated that the Executive Ethics Board (“the Board”):

- (a) develop a statewide plan, with performance measures, to provide overall direction and accountability in all executive branch agencies and statewide elected offices;
- (b) coordinate and work with the commission on judicial conduct and the legislative ethics board;
- (c) assess and evaluate each agency’s ethical culture through employee and stakeholder surveys, review Washington State Quality Award feedback reports, and publish an annual report on the results to the public; and
- (d) solicit outside evaluations, studies, and recommendations for improvements from academics, nonprofit organizations, the public disclosure commission, or other entities with expertise in ethics, integrity, and the public sector

The Board completed and published this report on February 1, 2012.

Board Activities

Advisory Opinions

The Board continued an in-depth review of all of its previously issued Advisory Opinions (AO) to determine if the advice was still current and applicable or whether the AO needed to be retired, repealed or revised. Throughout 2011 the Board reviewed the following AOs:

AO Number	Action	Topic
96-10	Revised format	Use of Employee Mailing List by Agency Elected Officer
96-12	Revised format	Accepting Food and Beverages at a Community or Civic Event
97-01	Repealed	Outside Employment
97-01A	Repealed	Supplemental
97-02	Revised format	Accepting Food and Beverages at Government-Sponsored Events

97-14	Retired	Outside Employment
98-01	Revised format	Acceptance of Meals by a Regulatory Employee
98-06	Revised format	Acceptance of Meals by a Regulatory Employee
99-01	Retired	Definition of Legislative Body/Political Activities
99-05	Revised format	Cash Awards
00-05	Revised format	Cash Awards
00-06	Revised format	Cash Awards
00-11	Repealed	Use of State Facilities for Voluntary Benefits
02-01	Revised format	Use of State Facilities to Conduct Union Business
03-02	Revised	Use of State Resources/Political Campaigns/Voters Pamphlet Statements
04-01	Revised format	Use of Agency Websites to Provide Links to Private Web Sites that Advocate for or Against Ballot Initiatives or Political Candidates
04-02	Revised format	Use of State Facilities to Support Private Commercial Advertising Activity
11-01	New	Expert Witness/Expert Testimony

Formal Board Advice

Throughout the year, agencies request advice from the EEB on a variety of subjects. Here are some of the questions posed to the EEB in 2011:

Question: Would it violate the Ethics in Public Service Act for the Department of Social and Health Services to use state resources to send out an informational mailer to its clients on behalf of a non-state, for-profit company?

Conclusion: Yes. WAC 292-110-010(5)(a) prohibits even the de minimis use of state resources to conduct an outside business, private employment or other activities conducted for private financial gain.

Questions:

1. Whether the ethics law prohibits an Engineering Manager from accepting a position with Sound Transit to work on a project that he participated in as a state employee?

2. Whether there are time limitations, based on the Engineering Manager's involvement with the Two-Way HOV and East-link Projects as a WSDOT employee that would prohibit him from working on these projects on Sound Transit's behalf?

Conclusions:

1. The Ethics in Public Service Act states that a former employee may not assist another person in a transaction with the state if they have participated in that transaction while employed with the state. In the case of an Engineering Manager, the

answer would depend on pinpointing the transaction(s) that the engineer worked on while at WSDOT and their role with that same transaction at Sound Transit.

2. There is a 1-year waiting period if the former state employee negotiated a contract with a particular vendor, then went to work for that same vendor on the contract that he negotiated. This waiting period does not appear to apply to this particular set of facts.

Staff Activities

During 2011, the Board staff collaborated with other state and private organizations on several projects.

Legal Defense Funds Working Group

In 2010, the Public Disclosure Commission (PDC) invited representatives of the Legislative Ethics Board, the Executive Ethics Board and the Commission on Judicial Conduct to participate in a roundtable discussion on legal defense funds. A legal defense fund is defined as a separate account (separate from a campaign account or other account) established by a candidate or public official to defray attorneys' fees and other legal costs incurred for the candidate's or public official's legal defense. "Public officials" are persons filing personal financial affairs reports with the PDC. As a result, a Legal Defense Funds Work Group of those agencies' staff was created.

The Work Group met throughout 2011 to research legal defense funds and review other jurisdictions' experiences and laws. The group reviewed Washington laws including RCW 42.17 (campaign finance and personal financial affairs disclosures) and RCW 42.52 (state ethics laws). The results of this joint research project were summarized in an August 18, 2011 *Legal Defense Funds Work Group Report*. The report contained two staff recommendations describing that:

- The public would be interested in requiring disclosure of the identity and contribution amount of persons donating to a public official's or candidate's separate legal defense fund, if such funds are created.
- Depending upon the facts, under current law a donation to a separate legal defense fund of a state official subject to RCW 42.52 could be considered a "gift."

Copies of the report were made available to the participating boards and commissions in the joint research project. Given its role and prior interest, the PDC became the "lead" agency on this subject. As a result, the PDC drafted legislation to address legal defense funds in Washington and provided that information to interested legislators and legislative staff.

Other Projects

The Board staff partnered with the Commission on Judicial Conduct, the Office of Administrative Hearings, the Board of Industrial Insurance Appeals and the Attorney General's Office to provide joint ethics training and panel discussions to a myriad of state agencies.

Project Management Institute

Board staff collaborated with the Project Management Institute and other private, non-government organizations to present an 8-hour training session regarding ethics as it relates to organizations of every size and type.

Personal Service Contract Managers

The Board staff annually gives a presentation at the Personal Service Contracts Overview, a 7-hour class for agency personnel who manage personal service contracts. In the presentation, the staff distributes informational materials and informs the agency personnel about conflicts of interest, post-employment laws, special privilege and use of state resources.

Northwest Ethics Network

In 2011, representatives of the Board joined the Northwest Ethics Network (the Network). It was created in 1993 by Seattle University's Albers School for Business and Economics and is a conglomerate of local ethical leaders from over 30 non-profit, corporate, and government organizations. For example, Seattle Ethics and Elections Commission and the King County Ombudsman represent government programs while Microsoft, Boeing, Starbucks and others speak for corporate ethics and compliance programs. Since the Network's inception, it now has sub-groups that meet on different topics, such as policy management. By participating, the Board:

- receives feedback on its current practices and statewide plan,
- benchmarks against others' performance,
- learns about and adapts to other organizations' successful ethics strategies,
- builds a stronger ethics community in Washington State.

Ethics Advisors Group

The Ethics Advisors Group met the week following the Board meeting to discuss Board actions and to provide input to the Board staff regarding opinions and performance measures. This group was a valuable as a resource for developing employee surveys, providing feedback on their ethical cultures and developing methods to measure ethics programs.

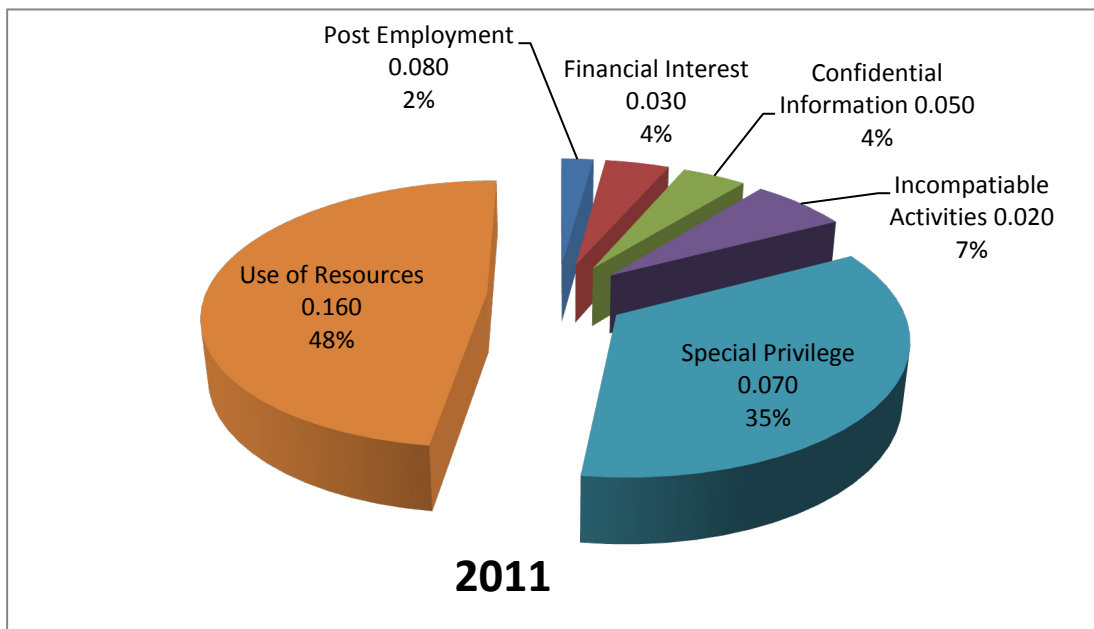
Human Resource (HR) Managers Group

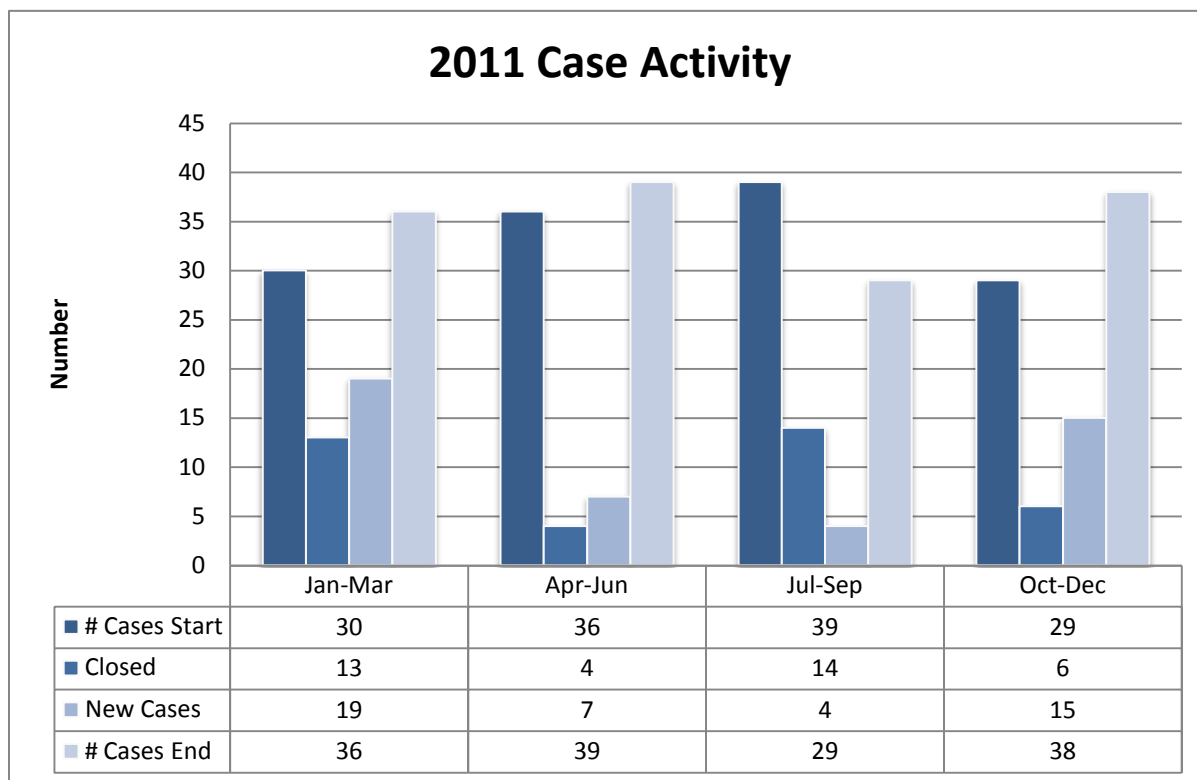
The Executive Director attended HR Managers meeting to provide information regarding ethical issues, elicit assistance regarding revisions to rules or policies and to gather input regarding training. These meetings helped disseminate information to agencies much quicker and have greatly enhanced the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

Enforcement Activities

Between January 1 and December 31, 2011 the EEB opened 42 new cases. Penalties increased over 51 percent, totaling \$129,929 in 2011. The Board levied its largest fine ever in case 2009-054 for a fine of \$109,678.98.

The use of public resources for personal gain was again the leading allegation for cases accepted for filing in 2011, but only by a small margin, with special privileges running a close second.





The Board imposed penalties or accepted stipulated penalties from 12 state employees as follows:

	Allegation	Violation	Penalty
Employee 1	A Department of Social and Health Services employee used state resources for personal benefit.	RCW 42.52.160	\$1,000
Employee 2	A Department of Social and Health Services employee used state resources for personal gain.	RCW 42.52.160	\$1,500
Employee 3	Department of Social and Health Services used state resources for personal gain to access websites of personal interest and to place order for her personal	RCW 42.52.160	\$1,000

business as a cosmetics consultant.

Employee 4	A former Evergreen State College employee misappropriated public funds, entered into contracts on behalf of TESC with a company owned by his family members, received financial gain from his position with the college and used state resources to benefit himself and his family members.	RCW 42.52.070, .020, 030, 120	\$109,678.98
Employee 5	A former Department of Social and Health Services employee at Western State Hospital violated state law when he used state resources for personal business gain by sending and receiving non-work related emails, visiting non-work related websites, and using state resources for his outside real estate business.	RCW 42.52.160	\$1,500
Employee 6	Department of Corrections employee used state resources for personal benefit.	RCW 42.52.160	\$500
Employee 7	A former Department of Social and Health Service, Developmental Disability Division employee worked simultaneously for a private non-profit organization during her scheduled state work hours.	RCW 42.52.160	\$10,000
Employee 8	An Employment Security Department employee used state resources to send an email to veterans in Southwest	RCW 42.52.160	\$1,000

Washington to promote a campaign event for US Senator Patty Murray.

Employee 9	A Department of Corrections employee used state resources for personal benefit.	RCW 42.52.160	\$1,500
Employee 10	A Spokane Falls Community College employee did not work all of his contract hours, filed false hourly time sheets and used his state computer for personal benefit.	RCW 42.52.160	\$1,000
Employee 11	An employee of the Department of Social and Health Services used state resources to further an outside business.	RCW 42.52.160	\$250
Employee 12	An employee of the Department of Social and Health Services used state resources to further an outside business.	RCW 42.52.160	Letter of Instruction

Training

The EEB staff continued to offer training to all agencies in a classroom setting via a 4-hour in-depth look at the Ethics in Public Service Act, RCW 42.52 and a 2-hour refresher course for those employees who already have a good working knowledge of the Act.

Over the past year, the EEB Staff held 44 training sessions across the state and trained over 1900 state employees. The EEB staff participated in a continuing legal education session for the Department of Social and Health Services, Department of Health, and the Attorney General’s Office.

EEB Newsletter

The EEB Staff published an EEB Newsletter immediately following a Board meeting to inform state agencies of recent Board opinions and enforcement actions. These newsletters are posted on the ethics website for the public to read.

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 2011, the EEB Director approved 119 contracts.

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

