

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 03-014

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the Washington State Executive Ethics Board (Board) through Melanie de Leon, Executive Director. The following stipulated facts, conclusions, 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.

**Section 1: PROCEDURAL FACTS**

1.1. A Whistleblower complaint was received by the State Auditor's Office (SAO) on or about June 9, 2003. The SAO investigated the allegations and concluded that reasonable cause existed to believe that Withheld used state resources for personal benefit; used her position as Regional Administrator for personal benefit and for the benefit of others; and removed documents which may have contained confidential information from the Agency without the required authorization. The SAO referred the Whistleblower Report to the Board on or about July 12, 2004.

1.2. In addition to the Whistleblower referral, on June 17, 2003, the Board received several complaints which alleged that Withheld used state resources to support her nonprofit

organization; that she gave preferential treatment to family and church members in hiring and promotion decisions; and that she made inappropriate use of the Internet from her state computer.

On February 9, 2007, based on staff's preliminary investigation, the Board initiated a complaint to expand the Board investigation to consider whether [Withheld] had a financial interest in her employees; used her position to grant special privileges; and solicited and/or received gifts of economic value that could reasonably be expected to influence her actions.

1.3. On April 13, 2007, the Board found reasonable cause to believe [Withheld] may have violated one or more provisions of RCW 42.52, the Ethics in Public Service Act, and/or WAC 292-110-010.

1.4. The Board is authorized under RCW 34.05.060 to 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.

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

1.6. [Withheld] recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. [Withheld] 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 set forth below.

1.7. [Redacted] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.8. If the Board accepts this stipulation, the Board will release and discharge [Redacted] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. Ms. [Redacted] 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 and Agreed Order.

1.9. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [Redacted] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. Furthermore, any and all stipulations by Ms. [Redacted] are for the sole purpose of settling this matter and are not admissible or stipulated to for any other purpose than the ethics board proceedings.

1.10. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.11. If the Board rejects this Stipulation, or if [Redacted] does not accept the Board's proposed modification(s), if any, Ms. [Redacted] waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. [Redacted] understands and agrees that, if this proposed Stipulation

is rejected by Ms. <sup>d</sup> Withheld with any applicable modification by the Board, this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

## Section 2: FINDINGS OF FACT

2.1. At all times material hereto Withheld served as a DSHS Region 5 Administrator, a position that she occupied from February 1996 until February 2005.

2.2. In July 2004, the SAO found reasonable cause to believe that Withheld used state resources for personal benefit; used her position as Regional Administrator for personal benefit and for the benefit of others; and removed documents which may have contained confidential information from the Agency without the required authorization, in violation of RCW 42.52. The specific findings included that Withheld

- a. Allowed her son to use her state computer to download information related to his college studies;
- b. Sent, received and stored e-mail messages related to her nonprofit organization, rental property, Bible scriptures, ministry, gifts, donations and tithing from employees and other non-work-related topics;
- c. Used her state computer to access Internet sites related to law schools, ministry, nonprofit organizations, shopping, real estate, insurance, news, entertainment and electronics;
- d. Used her state computer to store documents related to personal newsletters, class assignments, class projects and distributorship agreement;
- e. Used her state mailing address on a nonprofit registration form filed with the state Department of Revenue;
- f. Posted fliers at Region 5 inviting employees to Bible study during lunch;
- g. Requested through email that Region 5 employees support her nonprofit organization;
- h. Used her state workplace to sell videotapes of services held at her nonprofit;
- i. Asked an employee to do a personal favor for her relating to her rental property;
- j. Rented her personal real estate property to employees;
- k. Acted on behalf of DSHS but without DSHS' consent or knowledge to assist a member of her nonprofit organization in obtaining a visa through the U.S. Immigration and Naturalization Service;

1. Sent an email on behalf of her daughter-in-law to a potential supervisor who reported to [Withheld]
- m. Used her position to obtain state positions for members of her nonprofit.

2.3. On June 17, 2003, the Board received several complaints which alleged that [Withheld] used state resources to support her nonprofit organization; that she gave preferential treatment to family and church members in hiring and promotion decisions; and that she made inappropriate use of the Internet from her state computer. On February 9, 2007, based on staff's preliminary investigation, the Board initiated a complaint to expand the Board investigation to consider whether [Withheld] had a financial interest in her employees; used her position to grant special privileges; and solicited and/or received gifts of economic value that could reasonably be expected to influence her actions.

2.4. On April 13, 2007, the Executive Ethics Board found reasonable cause to believe that [Withheld] committed a violation or violations of RCW 42.52, and/or WAC 292-110-020. The Board made specific findings based on evidence that [Withheld]

- a. Violated RCW 42.52.020, Activities incompatible with public duties, by:
  - Renting her personal real estate to subordinates, who were also Church members, and allowing Church members who were also subordinates or prospective DSHS employees to live in her home;
  - Using subordinates as officers in her nonprofit corporations;
  - Obtaining a work visa for a Church member who also served as the Church's webmaster, and who lived with her, so that he could work for DSHS. She represented to the Immigration and Naturalization Service (INS) that she had the authority to act on DSHS' behalf, and could commit the agency to a three-year term of employment when she knew he was being hired as a temporary. She failed to recruit a U.S. worker for the position, and did not give notice to other workers as required by the INS. She did not consult with her superiors at DSHS at any time during the process, nor did she contact an Assistant Attorney General for assistance;
  - Accepting a \$10,000 money order, payable to her, from a subordinate.
- b. Violated RCW 42.52.070, Special privileges, by:
  - Assisting a Church member to obtain a visa to work for DSHS without the knowledge of her superiors, and without recruiting a U.S. worker for the job as required by INS regulation;

- Sending an email on behalf of her daughter-in-law to a prospective supervisor, who was a subordinate to Evans at DSHS, to inquire about a job for her daughter-in-law;
  - Assisting family members and Church members to obtain jobs with DSHS.
- c. Violated RCW 42.52.140, Gifts, by:
- Accepting a \$10,000.00 money order from a subordinate;
  - Engaging in an email exchange on her state computer with a subordinate who addressed her as “Pastor [Withheld] and who stated that if she did not make it to Church on Saturday, she would bring [Withheld] her Bosses day gift and donation on Monday.
- d. Violated RCW 42.52.160, Use of persons, money or property for private gain, by:
- Sending, receiving and storing emails and documents not related to DSHS business on her state computer;
  - Using her state computer to access non-work-related Internet websites;
  - Using state resources to apply for a grant for her Church and to check on the status of the grant application;
  - Authorizing her confidential secretary to use state resources to check on the status of the Church grant application.
  - Using her DSHS address as the “address of the principal place of business in Washington” for her teen housing nonprofit corporation,
  - Using her DSHS address as the place at which she would receive mail and accept service of process as the registered agent of her teen housing nonprofit corporation;
  - Using her state computer to send, receive and store emails related to her rental properties and nonprofit corporations;
  - Selling videotapes of her Church services at work.

### Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] and over the subject matter of this complaint.

3.2. 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.

3.3. [Withheld] stipulations to the following conclusions of law are for the sole purpose of reaching settlement in this matter and are limited to these proceedings. These stipulations and conclusions are not admissible for any other purpose or proceedings.

3.4. The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees from engaging in activities that are in conflict with their official duties. 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.**

Withheld violated RCW 42.52.020, Activities incompatible with public duties, when she rented her personal real estate to subordinates, who were also Church members, and allowed Church members who were also subordinates or prospective DSHS employees to live in her home; used subordinates as officers in her nonprofit corporations; obtained a work visa for a Church member who also served as the Church's webmaster, who lived with her, so that he could work for DSHS; and, while on home assignment as Regional Administrator, but prohibited by DSHS from providing any work-related consultation to staff, accepted \$7,700.00 from a subordinate, intended to be applied to the purchase of property for Withheld church.

3.5. RCW 42.52.070, Special privileges, 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.**

Withheld violated RCW 42.52.070, Special privileges, when she assisted a Church member to obtain a visa to work for DSHS without the knowledge of her superiors, and without recruiting a U.S. worker for the job as required by INS regulation; sent an email on behalf of her daughter-in-law to a prospective supervisor, who was a subordinate to Withheld at DSHS, to inquire about a job for her daughter-in-law; and assisted family members and Church members to obtain jobs with DSHS.

3.6. RCW 42.52.140, Gifts, states:

**No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift,**

**gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.**

Withheld

violated RCW 42.52.140, Gifts, when, while on home assignment as Regional Administrator, but prohibited by DSHS from providing any work-related consultation to staff, accepted \$7,700.00 from a subordinate, intended to be applied to the purchase of property for

Withheld

church.

3.7. The Ethics in Public Service Act 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.**

WAC 292-110-010(3) allows state employees to make occasional but limited use of state resources under certain circumstances, however, WAC 292-110-010(6) explicitly prohibits at all times the private use of state resources for:

- (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, including, but not limited to: A private business, a nonprofit organization, or a political party (unless provided for by law or authorized by an agency head or designee); ...

Withheld

violated RCW 42.52.160(1), Use of persons, money or property for private gain, and/or WAC 292-110-010(3) when she sent, received and stored emails and documents not related to DSHS business on her state computer; used her state computer to access non-work-related Internet websites; used state resources to apply for a grant for her Church and to check on the status of the grant application; authorized her confidential secretary to use state resources to check on the status of the Church grant application; used her DSHS address as the "address of the principal place



of business in Washington” for her teen housing nonprofit corporation; used her DSHS address as the place at which she would receive mail and accept service of process as the registered agent of her teen housing nonprofit corporation; and used her state computer to send, receive and store emails related to her rental properties and nonprofit corporations.

3.8. The Board is authorized to impose sanctions for violations of 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.

## **II. AGGRAVATING & MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is an aggravating factor that [Withheld] as a Regional Administrator, had significant official, management or supervisory responsibility. Mitigating factors include (1) that Ms. [Withheld] believed that DSHS policies at that time and relating to assisting prospective employees to obtain visas were ambiguous and that she believed she took significant steps towards attempting to find out the proper process but may have failed to exercise due diligence in completing the visa process; and (2) [Withheld] believed that while she was still a Regional Administrator, but on home assignment and barred by DSHS from consulting with or directing staff, it was not inappropriate to accept \$7,700.00 to be used towards purchase of property for her church from a subordinate (who was also a church member), who did not, at that time, technically report to [Withheld]

## **III. AGREED ORDER**

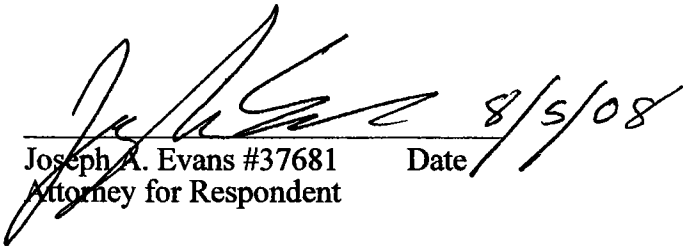
[Withheld] will pay a civil penalty in the amount of five thousand dollars (\$5,000.00) and an additional three thousand two hundred dollars (\$3,200.00) in investigative costs for a total of eight thousand two hundred dollars (\$8,200.00). [Withheld] will make payment(s) to the Executive Ethics Board as agreed to by the parties until the full civil penalty in the amount of eight thousand two hundred dollars (\$8,200.00) is paid in full.

**CERTIFICATION**

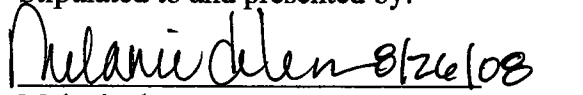
I, Withheld hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance.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


Withheld

Respondent

  
Joseph A. Evans #37681      Date 8/5/08  
Attorney for Respondent

Stipulated to and presented by:

  
Melanie de Leon      Date 8/26/08  
Executive Director, Executive Ethics Board

  
MB Newberry #15635      Date 20 Aug 2008  
Attorney for Executive Ethics Board

**IV. 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 16<sup>th</sup> day of September, 2008.

Judith K. Golberg  
Judith K. Golberg, Chair

Neil Gorrell  
Neil Gorrell, Vice-Chair

Evelyn P. Yenson  
Evelyn P. Yenson, Member

Linnaea Jablonski  
Linnaea Jablonski, Member

Michael F. Connelly  
Michael F. Connelly, Member

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

Withheld Respondent Date