

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

NO. 08-005

STIPULATED FACTS, CONCLUSIONS
AND ORDER

Respondent.

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. On July 16, 2007, the Board received a complaint that alleged that Withheld an employee at Olympic College, made personal phone calls from a state-issued cell phone that resulted in excess charges totaling more than \$2,000.00. An internal investigation into Withheld personal use of the state cell phone was conducted by Olympic College Information Technology personnel. The results of the internal investigation were provided to the Board with the complaint.

1.2. Board staff reviewed the internal investigation conducted by Olympic College.

1.3. 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.

1.4. 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, 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).

1.5. [Withheld] recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. [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.

1.6. [Withheld] 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.

1.7. If the Board accepts this stipulation, the Board will release and discharge [Withheld] 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. Mr. [Withheld] 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.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.10. If the Board rejects this Stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Mr. [Withheld] 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, Mr. [Withheld] understands and agrees that, if this proposed Stipulation is rejected by Mr. [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. [Withheld] is employed as an Information Technician 2 by Olympic College.

2.2. In June 2007, the College's Executive Director of Information Technology became aware of a large bill for the cell phone assigned to [Withheld]. A review of [Withheld] cell phone use for the period March 21 through May 29, 2007 revealed that he exceeded the included minutes on the state's plan by 5,610 minutes and he sent or received 1,736 text messages that were not covered by the state plan. The overages resulted in excess charges totaling \$2,109.97.

2.3. [Withheld] admitted to his supervisor that he clearly understood that personal use of the state-issued cell phone was inappropriate. [Withheld] explained that he believed the state plan allowed free night and weekend calling, however, a review of the cell phone detail billing for May 21-29, 2007 shows that [Withheld] made and received calls at all hours of the night and day, not just at night and on weekends.

2.4. As a result of the misuse of his state cell phone, [Withheld] was suspended without pay for five days, resulting in a loss of wages of \$705.00. Through payroll deduction, [Withheld] is repaying \$2,112.33 to Olympic College to cover the cost of his personal use of the state-issued cell phone.

Section 3: CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] and over the subject matter of this complaint.
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. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."
- 3.4. [Withheld] used his state-issued cell phone to send and receive personal phone calls, text and picture messages. Based on Findings of Fact 2.1 through 2.3, [Withheld] used state resources in violation of RCW 42.52.160.
- 3.5. 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. Mitigating factors include that Mr. [Withheld] was suspended without pay for five days resulting in a loss of wages of \$705.00, and he is making restitution to the College through payroll deduction in the amount of \$2,112.33. The

entire amount is scheduled to be repaid by June 25, 2008.

III. AGREED ORDER

Mr. ^{Withheld}_{id} will pay a civil penalty in the amount of one thousand dollars (\$1,000.00), and investigative costs in the amount of two hundred dollars (\$200.00), for a total of one thousand two hundred dollars (\$1,200.00). Payment is due to the state Executive Ethics Board on a schedule as agreed to by the parties.

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
[Redacted Signature]

5-6-08
Date

Respondent

Stipulated to and presented by:

Melanie de Leon 5/27/08

Melanie de Leon Date
Executive Director

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 13 day of June, 2008.

Judith K. Golberg
Judith K. Golberg, Chair

Evelyn P. Yenson
Evelyn P. Yenson, Member

Neil Gorrell
Neil Gorrell, Vice-Chair

Linnæa Jablonski
Linnæa Jablonski, Member

Michael F. Connelly
Michael F. Connelly, Member

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

Withheld Respondent Date