

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 08-017

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. On October 4, 2007, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld an employee of the State of Washington, Seattle Community College (College), may have violated state law when he used his state SCAN access and state issued cellular telephone to make personal calls and pursue personal interests. The Board reviewed this referral and issued a complaint on November 9, 2007.

1.2. 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.

1.3. 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).

1.4. Withheld recognizes that the evidence available to the Board staff 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 set forth below.

1.5. Withheld 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) 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. 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.

1.7. 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.

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

1.9. 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 this proposed 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 the Director of Safety and Security for Seattle Central Community College. He is responsible for management of all security and safety operations at the college, including satellite branches and the Seattle Vocational Institute. These

responsibilities include the safety and security of over 11,000 student, staff, visitors and public. It also includes supervision of security staff, campus security, first aid, lost and found, physical safety, enforcement of city, state and college regulations, as well as overseeing coordination of the Emergency Preparedness and Safety Committee.

2.2. Mr. [Withheld] duties often necessitate flexibility in his work schedule including early starts and remaining at the college beyond his normal hours, availability during emergency situations, as well as providing coverage for staff absences. The college has employed Mr. [Withheld] since November 2004.

2.3. The SAO received a complaint that Mr. [Withheld] was using state resources for private gain. The SAO conducted an investigation and found reasonable cause to believe that improper governmental action occurred. The SAO reviewed Mr. [Withheld] state cellular telephone bills and state long-distance telephone bills, reviewed security company records and conducted interviews. The SAO investigation found:

**a. Long distance telephone charges.**

- i. Calls were made to Mr. [Withheld] home from September 27, 2006 through February 28, 2007. There were 74 calls made over 46 days for a total cost of \$32.34 and 9.8 hours. Mr. [Withheld] indicated that sometimes he has to work late so he needs to call home.
- ii. Mr. [Withheld] also made personal calls to his attorney, an emergency call to an animal clinic, an automotive dealer and a call to a cable television company. Charges for these calls totaled \$3.19 and the time spent on the calls was 82 minutes.

**b. Cellular telephone charges**

- i. Billings were reviewed from October 27, 2006 through March 25, 2007. Mr. [Withheld] made 177 calls totaling 7.22 hours to his home and his spouse's cellular telephone. Fifteen calls were made to his babysitter. Other calls were made to unidentified numbers.

**c. PCS (Personal Communication System) Data Downloads.**

- i. PCS Data charges on Mr. [Withheld] phone relate to the new alarm system that he is able to dispatch communications via the internet on his cell phone. He also views emergency management sites for traffic and weather. During bad weather, he is required to keep track of this

information to determine whether business should be suspended, delayed or canceled.

- ii. The billing contained a charge of \$6.99 for a video game. Mr. [Withheld] stated he had noticed the charge for the video game but did not know where it came from, as he had not accessed the site. He thought his children may have been playing with the cellular telephone.

2.4. Mr. [Withheld] had not attended ethics training when this behavior occurred.

However, he was aware that the human resources office sends out information periodically and thought he was in compliance.

2.5. On September 25, 2007, the college indicated they would be sending a district-wide memorandum reminding employees of relevant ethics policies and encouraging supervisors to review policies with their staff. Supervisors will also be monitoring and reviewing SCAN usage and college-issued cell phone records.

2.6. The college also reviewed the findings of the SAO and considered the extenuating responsibilities expected of Mr. [Withheld] as Director of Safety and Security. The college found that with a few exceptions regarding some personal calls, a text message and a video game charge, for which Mr. [Withheld] was required and made full restitution to the college, the preponderance of the issues, allegations and findings (most notably the internet usage and costs associated with college procedurally proscribed response by a contracted off-hours private security service) were deemed by the college to be within the area of Mr. [Withheld] responsibilities and the college's expectations of his services.

### 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.

3.4. 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.”

3.5. The Ethics in Public Service Act allows for *de minimis* personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. Mr. [Withheld] use of state resources, when viewed collectively went beyond the *de minimis* standard.

3.5. Based on Findings of Fact 2.1 through 2.6, Mr. [Withheld] used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.7. 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. There are no mitigating or aggravating factors to consider in this matter.

#### Section 4: AGREED ORDER

4.1. [Withheld] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) of the civil penalty on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order. If [Withheld] fully pays the remaining amount of two hundred fifty dollars (\$250.00) and commits no further violations of chapter 42.52 RCW within three calendar years of the date this order is accepted by the Board, [Withheld] will have fully satisfied his civil

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penalty obligations with regard to this matter and will be released from any obligation to pay the remaining suspended two hundred fifty dollars (\$250.00) of civil penalty.

4.2. The civil penalty of two hundred fifty dollars (\$250.00) is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

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

07/08/08  
Date

Respondent

Stipulated to and presented by:

Melanie de Leon 7/8/08

Melanie de Leon  
Executive Director

Date

**II. 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;

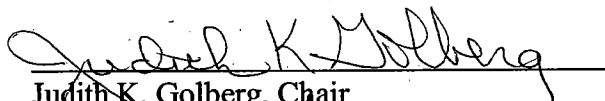
REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the

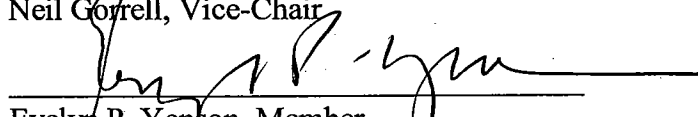
Respondent approves\* the following modification(s):


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\_\_\_\_\_  
\_\_\_\_\_

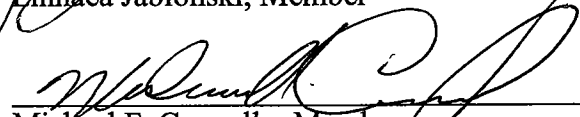
DATED this 11<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
Judith K. Golberg, Chair

  
\_\_\_\_\_  
Neil Gorrell, Vice-Chair

  
\_\_\_\_\_  
Evelyn P. Yenson, Member

  
\_\_\_\_\_  
Linnaea Jablonski, Member

  
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Michael F. Connelly, Member

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

Withheld Respondent Date