

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

RACHEL ZEBLEY,

Respondent.

No. 08-124

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, RACHEL ZEBLEY, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 or about June 23, 2008, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Rachel Zebley, an employee of the State of Washington, Department of Health, may have violated state law when she used state resources for private gain. The Board reviewed this referral and issued a complaint on November 14, 2008.

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. Rachel Zebley 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. Rachel Zebley recognizes that the evidence available to the Board staff is such that the Board may conclude she 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. Rachel Zebley waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 Rachel Zebley 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. Rachel Zebley 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 Rachel Zebley 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 Rachel Zebley does not accept the Board's proposed modification(s), if any, Rachel Zebley 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, Rachel Zebley 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. Rachel Zebley is a Secretary Lead at the Department of Health's (DOH) Public Health Laboratory in Shoreline.

2.2. On January 29, 2008, the State Auditor's Office (SAO) received a Whistleblower Complaint alleging that Rachel Zebley was using her state computer to access Internet chat rooms.

2.3. Staff of the SAO Whistleblower program conducted an investigation into that allegation and on June 23, 2008 issued its report. The SAO investigation found reasonable cause to believe an improper governmental action had occurred, and forwarded the report of investigation to the Executive Ethics Board.

2.4. Board staff reviewed the SAO working papers and recommended to the Board that it initiate a complaint against Rachel Zebley, which it did at its November 14, 2008 Board meeting.

2.5. During its investigation, the SAO found in Rachel Zebley's "sent mail" folder 283 non-work-related emails dated between December 26, 2007 and February 21, 2008 (a span of 33 working days).

2.6. In addition to the emails, the SAO investigation revealed that during February 2008, Rachel Zebley used her state computer to visit websites relating to dating, retailers, online auctions, entertainment, and banking.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Rachel Zebley 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 resources for personal benefit.

3.5. Based on Findings of Fact 2.1 through 2.6, Rachel Zebley used state resources in violation of RCW 42.52.160.

3.7. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

Section 4: AGREED ORDER

4.1. For the violation of RCW 42.52.160, Rachel Zebley will pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The civil penalty of \$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, or as agreed to by the parties.

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):

DATED this 10th day of April, 2009.

Neil Gorrell

Neil Gorrell, Chair

Linaea Jablonski

Linaea Jablonski Vice-Chair

Judith K. Golberg

Judith K. Golberg, Member

Mike Connelly

Mike Connelly, Member

Approved via telephone (RS)

Martin Biegelman, Member

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

Rachel Zebley, Respondent Date