

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

SHELLEY HEPLER

Respondent.

No. 2010-061

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, SHELLEY HEPLER, 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 March 30, 2010, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Shelley Hepler, a Correctional Records Supervisor at the Department of Corrections (DOC), may have violated state law when she used state resources for personal benefit. The Board reviewed this referral and issued a complaint on September 17, 2010.

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. Shelley Hepler 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. Shelley Hepler 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. Shelley Hepler 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 Shelley Hepler 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. Shelley Hepler 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 Shelley Hepler 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 Shelley Hepler does not accept the Board's proposed modification(s), if any, Shelley Hepler 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, Shelley Hepler 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. Shelley Hepler was a Correctional Records Supervisor at the DOC East Region Records Division since December 1987. She began working for DOC in May 1986. She no longer works for DOC.

2.2. On June 17, 2009, the State Auditor's Office (SAO) received a Whistleblower Complaint alleging that Shelley Hepler used state resources to conduct a personal business.

2.3. The SAO analyzed Ms. Hepler's Internet use for May 26 to June 30, 2009 and August 24 through September 18, 2009. Evidence indicated that Ms. Hepler accessed her personal email website 97 times and sent 77 emails using her personal email account on 49 workdays. Ms. Hepler indicated that she generally had her personal email account up and

running during the day and that she checked the site multiple times each day. Ms. Hepler accessed the Mermaids of the Lake website 46 times during the 49 workdays Internet logs were available. Mermaids of the Lake is a non-work related website that is maintained by Ms. Hepler. She also visited sites such as match.com, Better Homes and Gardens, vanessabehan.org, visitkitsap.com, ice-cream-recipes.com, bettyconfidential.com, and Stamper family web.

2.4. Ms. Hepler's computer contained 26 personal emails in the "sent items" and 10 in the "In Box." Twelve of the emails related to Mermaids of the Lake.

2.5. Mermaids of the Lake is a website that is similar to an on-line newsletter. Ms. Hepler asserts that the intent of the website is to inspire and encourage people. She shares the website information with her employees. Internet research that Ms. Hepler did on her state computer relating to state parks, travel, and ice cream is referenced on Mermaids of the Lake website. Ms. Hepler does not believe Mermaids of the Lake is a business because she does not make a profit from it; however, the website charges for advertising.

2.6. Ms. Hepler has another business called Beading Babes, devoted to selling handmade jewelry and giving workshops on beading. Three emails on her state computer discuss the sale of handmade jewelry. Ms. Hepler asserts that she did not bring jewelry to the office to sell -that another employee wanted to see the jewelry so Ms. Hepler brought it in and the other employee sold the jewelry.

2.7. Ms. Hepler used the office printer to print invitations to her son's high school graduation party. Ms. Hepler indicates that she printed them at work because she could not do double-sided copies at home. She brought in her own card stock and estimates she printed about 30 double-sided color copies.

2.8. Ms. Hepler's July 2006 performance evaluation states, in part: "Shelley worked with her staff this past year to develop rules for the records office, which included not talking negatively about other staff and not using their position for personal gain."

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Shelley Hepler 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. WAC 292-110-010 strictly prohibits the use of state resources for "any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain..."

3.6. Based on Findings of Fact 2.1 through 2.8, Shelley Hepler 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

4.1 It is a mitigating factor that as a result of this violation Shelley Hepler is no longer employed by DOC.

4.2. Aggravating factors: 1) Shelley Hepler trained and coached her staff to not use their state position for personal gain, 2) she was in a supervisory position, and 3) her personal use of state resources was continuing in nature.

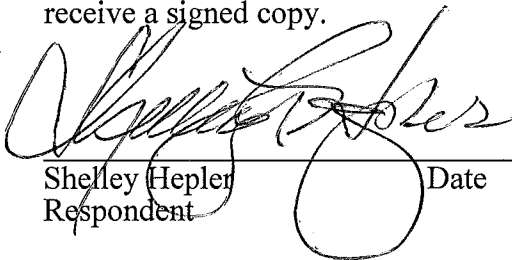
Section 5. AGREED ORDER

5.1. For the violation of RCW 42.52.160, Shelley Hepler will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00).


5.2. The civil penalty of \$1,500.00 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 otherwise agreed to by the parties.

CERTIFICATION

I, Shelley Hepler, 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.


Shelley Hepler _____ Date
Respondent

Stipulated to and presented by:


Melanie deLeon _____ Date
Executive Director

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 13th day of May, 2011.

Michael F. Connelly *RCB*
Michael F. Connelly, Chair

Matthew Williams III
Matthew Williams III, Vice Chair

Linnaea Jablonski *RCB*
Linnaea Jablonski, Member

Lisa Marsh
Lisa Marsh, Member

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

Shelley Hepler, Respondent

Date