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BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

BAROKAS MARTIN & TOMLINSON

In the Matter of:

[REDACTED]

Respondent.

No. 01-55

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

This stipulation is entered into under WAC 292-100-090(1) between [REDACTED], with her attorney Franklin L. Dennis, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board), through Susan Harris, Executive Director, with attorneys for Board Staff, Rob McKenna, Attorney General and Michael S. Tribble, Assistant Attorney General. 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 May 4, 2001, the Board received a referral from the State Auditor's Office (SAO) alleging that [REDACTED] [REDACTED] former Assistant Director of the Washington State Governor's Office of Indian Affairs (GOIA), violated chapter 42.52 RCW (Ethics in Public Service Act) during 1997, 1998 and 1999 while serving as Assistant Director of GOIA. These allegations were based on assertions that [REDACTED] (a) participated in payment by GOIA of honorariums to her spouse; (b) contracted with the Washington State Arts Commission to receive compensation for her participation on two panels conducted during normal state working hours, for

which she did seek prior approval and did not take leave; and (c) was a beneficiary to a contract between her spouse and the Portland State University for the conduct of tribal relations training in which she participated as an instructor on state paid time and with state reimbursement for travel expenses. The Board reviewed the SAO referral and issued a complaint on September 10, 2001.

1.2. On May 14, 2004, upon receiving the Board staff's investigative report and recommendation, the Board determined there was reasonable cause to believe that [REDACTED] had committed one or more violations of chapter 42.52 RCW, and that the potential penalty was in excess of \$500. The Board based its reasonable cause determination on alleged violations of RCW 42.52.120 and RCW 42.52.160 with respect to the purported contracts with the Arts Commission and Portland State University only; the Board found no reasonable cause with respect to the alleged honorarium payments to [REDACTED] husband.

1.3. The Board has authority under RCW 34.05.060 to establish procedures for informal settlement of matters in lieu of more formal proceedings under chapter 34.05 RCW (Administrative Procedures Act), to include adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.4. [REDACTED] 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. Without admitting to any of the allegations upon which the Board's reasonable cause determinations were made, [REDACTED] nevertheless recognizes that there exists a likelihood the Board may conclude from the available evidence that

she violated the Ethics in Public Service Act, even if unintentionally or unknowingly. 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. [REDACTED] 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 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 [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. [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.

1.8. 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.

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 [REDACTED] does not accept the Board's proposed modification(s), if any, [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, [REDACTED] 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. At all times relevant to the allegations at issue in this matter, the State of Washington employed [REDACTED] as Assistant Director of GOIA. [REDACTED] was Assistant Director of GOIA for ten years before she accepted a position at The Evergreen State College on September 1, 1999.

2.2. [REDACTED] was as a salaried, exempt employee at GOIA, appointed to the position of Assistant Director by the Agency Executive Director.

2.3. [REDACTED] primary responsibility as Assistant Director of GOIA was to develop and provide training to foster intergovernmental relations between Indian tribes and other governmental agencies. These duties at times took [REDACTED] out of state, as Washington commonly coordinated with other states on Indian affairs.

Agreement With Washington State Arts Commission

2.4. On May 13, 1999, [REDACTED] signed an agreement with the Washington State Arts Commission to serve on a Folk Arts Apprenticeship Panel and a Fellowship Panel. The agreement called for a payment of \$150.00 for services on the panels beginning on May 13, 1999 and ending no later than May 18, 1999, plus

reimbursement for expenses for meals, parking and transportation. [REDACTED] worked during the weekend prior preparing for her participation on the panels, both of which convened and concluded their sessions during normal working hours on May 13, 1999. Together, both panels lasted the better part of the workday. [REDACTED] [REDACTED] was paid \$150.00 under the agreement for her service on the panels, plus \$10.80 reimbursement for lunch and parking.

2.5. The Arts Commission did not seek competitive bids on the agreements for services on the Folk Arts Apprenticeship and Fellowship Panels, and [REDACTED] did not request prior Board approval for her agreement with the Arts Commission.

2.6. [REDACTED] did not take any form of leave from GOIA on May 13, 1999. One day of paid leave equated to approximately \$170.00 in compensation.

Contract With Portland State University

2.7. [REDACTED] husband, [REDACTED] is an independent governmental relations specialist. [REDACTED] expertise derives from extensive work with city, county, and federal agencies.

2.8. On May 26, 1999, [REDACTED] entered into a contract with Portland State University to provide a two-person team to conduct a two-day workshop entitled "Tribes 101: Understanding Native Sovereignty and Culture." Compensation under the terms of the contract was "\$300 per day times 2 days, times 2 people, plus expenses for both instructors." There is no evidence that [REDACTED] was intended to be the second instructor at the time the contract was negotiated. Other evidence shows that while the contract called for two instructors, Portland State University had written the contract as it did to stay within its speaker cost guidelines and still meet [REDACTED] price. [REDACTED] was paid \$1,400.00 under the contract.

2.9. [REDACTED] and her husband separately traveled to Portland State University on May 26, 1999, where [REDACTED] appeared in the same seminar program as her husband on May 27 and 28, 1999. No one else appeared or was scheduled appear to conduct the workshop.

2.10. [REDACTED] participation in the workshop was in her official capacity as Assistant Director of GOIA; she was not on any form of state leave at the time. She submitted a state travel voucher and received reimbursement for her travel related expenses, including meals and lodging for the trip to Portland.

2.11. [REDACTED] did not assist in negotiating nor did she sign her husband's contract with Portland State University. Neither, however, did [REDACTED] reimburse either the University or the state for her compensation or travel expenses.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 and conditions stated herein, subject to Board approval.

3.3. Under RCW 42.52.120(1), a state officer or state employee may not "receive any thing of economic value under any contract or grant outside of his or her official duties" unless specific conditions are met. Under RCW 42.52.120(1)(b), the prohibition does not apply, if "[t]he performance or administration of the contract or grant is not within the course of the officer's or employee's official duties."

3.4. RCW 42.52.120(2) states:

In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract or a series of substantially identical contracts or grants with a state agency only if:

.....

(c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties.

3.5. Based on Findings of Fact 2.1 through 2.6, [REDACTED] inadvertently violated RCW 42.52.120 when she accepted compensation from the Arts Commission without receiving prior Board approval for that contract.

3.6. Based on Findings of Fact 2.1 through 2.3 and 2.7 through 2.11, [REDACTED] inadvertently violated RCW 42.52.120 when her services as a workshop facilitator that were within the scope of her official duties as Assistant Director of GOIA were also compensated under her husband's contract with Portland State University.

3.7. RCW 42.52.160 prohibits a state officer or employee from using state resources to do outside work:

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.

3.8. Based on the Findings of Fact above, [REDACTED] [REDACTED] violated RCW 42.52.160 when she received state compensation from GOIA without taking leave at the same time that she received compensation from the Arts Commission for her service on Arts Commission panels, and when she received state compensation and travel expense reimbursement for work and expenses that were also compensated under her husband's contract with Portland State University.

3.9. The Board has the authority 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. It is an aggravating factor that [REDACTED] [REDACTED] and had significant

official and management responsibility in GOIA. It is a mitigating factor that [REDACTED] violations were unintentional or unknowing.

Section 4: AGREED ORDER

4.1. [REDACTED] will reimburse GOIA one hundred seventy dollars (\$170.00) for the day's salary she received from GOIA when the Washington State Arts Commission also paid her for the same day's work on the panels under her agreement with the Arts Commission.

4.2. [REDACTED] will reimburse GOIA three hundred forty dollars (\$340.00) for the two days salary she received from GOIA when Portland State University also compensated her husband for her services as a member of the two person training team under her husband's contract with the University.

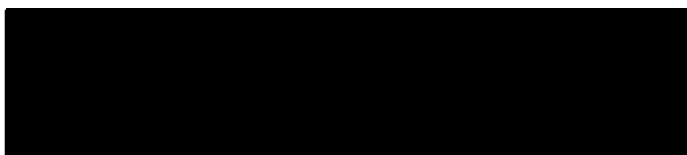
4.3. [REDACTED] will reimburse GOIA two hundred sixty five dollars (\$265.00) for two days of travel expenses related to the Portland University training, which was also included in the contract payment received under her husband's contract with the University.


4.4. [REDACTED] will also pay a civil penalty of five hundred dollars (\$500.00). The Board agrees to suspend the two hundred and fifty dollars (\$250.00) of the civil penalty on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW for a period of three years.

4.5. [REDACTED] shall make reimbursement to GOIA under the terms of this order within forty-five (45) days of approval of this Stipulation and Order. The two hundred and fifty dollar (\$250.00) amount of the civil penalty due and owing is payable to the Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order.

CERTIFICATION


I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.



Waived 

Franklin L. Dennis, Date
Attorney at Law
Barokas Martin & Tomlinson
Attorney for [REDACTED]

Stipulated to and presented by:

 *5/25/05*

Michael S. Tribble Date
Assistant Attorney General

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

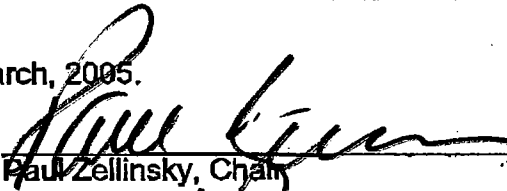
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ACCEPTED in its entirety;

REJECTED in its entirety;

 MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 11th day of March, 2005.



Paul Zellinsky, Chair

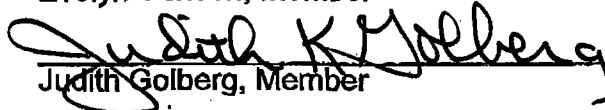


Trish Akana, Vice Chair



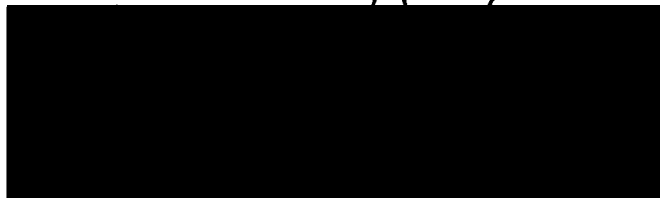
Marilee Scarbrough, Member

Evelyn Yensen, Member



Judith Golberg, Member

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



Franklin Dennis, Attorney Date