

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 02-012

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 June 16, 2003, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that [REDACTED] an employee of the State of Washington, Sentencing Guidelines Commission (SGC), used state resources to pursue personal interests and had state employees run personal errands for her. The Board reviewed this referral and issued a complaint on September 23, 2002.

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. [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).

1.4. Without admitting to any of the allegations, [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude [REDACTED] 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. [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 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 [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.

1.7. 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.

1.8. 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 [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. When the complaint in this matter was filed, and at all times material hereto, the State of Washington, SGC, employed [REDACTED] as the Executive Director. [REDACTED] has held this position since May 2000. In this capacity, [REDACTED] organizes and controls all activities of the staff regarding issues affecting statewide adult felony sentence and juvenile disposition policies and practices; appoints agency staff; reviews and approves budget preparations and assures the appropriate use of all agency resources.

### **Personal Use of the Scan System**

2.2. A review of [REDACTED] state long distance telephone billings (SCAN) from November 21, 2000 to May 1, 2002 revealed that [REDACTED] placed personal telephone calls to friends and family in Washington, Oregon, and Idaho during work hours. [REDACTED] made personal telephone calls totaling \$22.53. However, one of the SGC board members discouraged [REDACTED] from paying for the telephone calls.

### Personal Computer Use

2.3. A review of the hard drive of [REDACTED] computer from June 2000 to June 2002, revealed that she had visited Internet sites that were not work related. She also forwarded some of these sites to the staff via e-mail. Some of the sites related to job searches, travel, gardening, shopping, and financing links.

2.4. Review of e-mail messages on [REDACTED] computer revealed personal e-mail messages. She also sent quiz questions to her staff and gave them 60 seconds to respond with the right answer.

2.5. SGC employees participated in e-mail trivia "contests" on nearly a daily basis. Staff would complete the answers to the e-mail trivia contests during working hours. [REDACTED] not only condoned the behavior, but actually participated in the trivia contests, which may have led the staff to believe that it was acceptable. [REDACTED] asserts that the trivia contests were a morale booster, as the agency was experiencing wide spread staff discord, and the contests were designed to encourage the employees to interact with each other. Staff spent approximately 15 minutes per day answering the trivia questions. [REDACTED] contends that staff did not put in a lot of time responding to the trivia contests.

### Requests for Staff to Perform Personal Errands

2.6. [REDACTED] requested SGC staff perform ~~personal errands and accompany her to~~ places of personal interest as noted below:

- a) An employee voluntarily used his personal vehicle during working hours to pick up a large personal item for [REDACTED] and deliver it to her residence. This occurred in June 2001.
- b) [REDACTED] took two employees to a conference in Ocean Shores and after [REDACTED] presentation, instead of returning to the office, they spent the remainder of the day at the local casino. [REDACTED] asserts that they only delayed their return home; thus only changing their commute hours.

- c) [REDACTED] had her Administrative Assistant to drive her around during work hours to look at houses. [REDACTED] asserts that while on official business, they may divert their return route to drive by a home that was for sale. These were small detours.
- d) [REDACTED] had her Administrative Assistant take her shopping during work hours at a local clothing store so that the Assistant could purchase clothing for the director using the assistant's discount card. [REDACTED] asserts that they were on their lunch hour and the employee volunteered to put [REDACTED] purchase on her discount card.
- e) [REDACTED] took her employees out for long lunches and shopping. These events were celebrations for promotions or good-bye lunches.
- f) In August 2001, [REDACTED] asked an employee to make a purchase for her at a local store. When the employee offered to do it during a lunch break or after work, [REDACTED] stated that she wanted the item now and that the employee was to leave during work hours to make the purchase.

2.7. [REDACTED] asserts that her use of staff members has been misinterpreted. Members of the agency staff gave personal assistance in transporting personal effects and did include merchandise for the director or shopping lists. Rather than being the results of orders or a demand, however, these acts of assistance were voluntary and were intended and accepted at the time as personal favors. [REDACTED] asserts that she returned the courtesies in several ways, including providing transportation from time to time for staff members who needed to pick up automobiles at repair shops, picking up and delivering lunch orders and adding employees' needs to her personal shopping list.

2.8. On April 24, 2000, [REDACTED] issued and approve a SGC administrative policy regarding the use of Internet systems. That policy states, in part:

...Internet access and services are provided to employees of the Sentencing Guidelines Commission for the sole purpose of assisting them in performing official duties. ... Sentencing Guidelines Commission computer resources, information technologies, and networks may be used for legitimate SGC purposes only. Internet access and services are provided for official Sentencing Guidelines commission business activities. ... Sentencing Guidelines Commission computer resources, information technologies, and networks, including Internet access shall not be used for the following prohibited activities: Accessing the Internet for personal business, personal interest or any other non-Sentencing Guidelines Commission business use.

...

The SGC policy further indicates that SGC employees may make occasional but limited personal use of computer systems, if there is no cost to the state, the use of state resources does not interfere with the performance of the employee's official duties, the use is brief in duration and does not disrupt or distract other employees from the conduct of state business due to volume and frequency, and the use does not compromise the security or integrity of state information or software. The SGC policy was not submitted for approval to the Board.

### **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 contained herein, subject to Board approval.

3.3. 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. The Ethics in Public Service Act allows for de minimis personal use of state resources. WAC 292-110-010(4) states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards and the employee's agency has adopted a policy authorizing Internet access consistent with the Board's de minimis rule.

3.5. Based on Findings of Fact 2.1 to 2.7, [REDACTED] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and agency policy. [REDACTED] encouragement of the trivia contest obligated other employees to make personal use of state resources, her personal use of the state telephone and computer and her requests that subordinates perform personal errands for her violated agency policy and exceeded the de minimis standards.

3.6. 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. In the current matter, it is a mitigating factor that due to the wide staff discord, [REDACTED] thought that the trivia contest appeared to encourage positive staff interaction.

3.7. It is an aggravating factor that the violation tended to significantly reduce public respect for, or confidence in, state government or state government officers or employees (WAC 292-120-030(2)(e)); [REDACTED] had significant official, management, and supervisory responsibility (WAC 292-120-030(3)(d)); and that by participating in trivia contests with her subordinates, her behavior encouraged SGC employees to make personal use of state resources and abuse state time, her subordinates have incurred sanctions imposed by this Board.

#### **Section 4: AGREED ORDER**

4.1. [REDACTED] will pay a civil penalty in the amount of three thousand five hundred dollars (\$3,500.00). The Board agrees to suspend \$1,000.00 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.

4.2. The civil penalty due in the amount of two thousand five hundred dollars (\$2,500.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in five (5) equal installments of five hundred dollars (\$500.00) with the first payment due on September 1, 2005, and successive payments due on the first day of each month until the last payment which is due on January 1, 2006. Failure to make timely payment will cause the entire amount of the civil penalty to become due and payable within ten (10) days of the missed payment.

**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 voluntarily agree to this Stipulation.

[REDACTED]

6/20/05  
Date

Respondent

Stipulated to and presented by:

Susan Harris 6/23/05

Susan Harris  
Executive Director

Date



