

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 06-030

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ ██████████ 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. A whistleblower complaint was received by the State Auditor's Office (SAO) on March 11, 2005. The complaint alleged that ██████████ a Washington State Department of Transportation (WSDOT) employee, was using state resources for an outside business. The EEB received the whistleblower complaint referral from the SAO on January 9, 2006. The Board initiated a complaint on March 10, 2006. On July 13, 2006, the Board found reasonable cause to believe a violation of RCW 42.52.160 may have occurred.

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. ██████████ 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. ██████████ recognizes that the evidence available to the Board staff is such that the Board may conclude ██████████ 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. ██████████ 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 ██████████ 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. ██████████ 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 ██████████ 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 At all times material to the allegations contained in the complaint, [REDACTED] was employed as a Transportation Technician 3 and Photographer in the Department of Transportation's Traffic Special Projects Division.

2.2. In July 2000, [REDACTED] was reprimanded by the WSDOT for personal use of state resources. The letter of reprimand states that [REDACTED] did misuse state resources by using the state email system to exchange personal emails with friends and outside associates. The letter of reprimand expressed the expectation that [REDACTED] would not use his state computer to send or forward email messages or to access Internet sites that were unrelated to state business.

2.3. In March 2002, the State Auditor's Office (SAO) received a complaint which alleged that [REDACTED] was using state resources for an outside business. As a part of its investigation of the whistleblower complaint, the SAO reviewed the contents of the hard-drives from [REDACTED] state computers. The SAO review revealed correspondence from [REDACTED] to family members and others on "True2Life Photography" letterhead; photos of family members, class photos and a photo of former Governor Gary Locke; autobiographical and/or publicity statements; Outlook journal entries regarding bodybuilding; articles by [REDACTED] pertaining to bodybuilding; various letters on letterhead for "Bodybuilding & Fitness Photography" and "[REDACTED] True 2 Life Photography"; invoices dated October 25, 2001 to June 14, 2004 for photography services; envelopes and labels for [REDACTED] Bodybuilding & Fitness Photography and [REDACTED]

True2Life Productions; bodybuilding photos; and publicity, advertising documents and competition photo information cards for Bodybuilding & Fitness Photography.

2.4. Also included in the personal documents found by the SAO on [REDACTED] computer were documents created outside the Board's five year statutory authority, including letters, brochures and invoices related to his outside photography businesses and 118 emails or email strings dated between September 22, 1995 and March 4, 2000. All but one of those emails related to [REDACTED] outside business interests. Those emails were still being retained by [REDACTED] and stored on state equipment in 2005 despite the July 2000 letter of reprimand he received for non-work-related email use.

2.5. [REDACTED] has acknowledged using his state computer to print out invoices and to send business letters to clients. The WSDOT determined that the appropriate discipline for [REDACTED] use of state equipment to support a personal business would be a demotion.

2.6. On May 25, 2006, [REDACTED] signed a settlement agreement with the WSDOT in which he agreed to resign in lieu of receiving a demotion.

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. Based on Findings of Fact 2.3 and 2.4, [REDACTED] used state resources in violation of RCW 42.52.160.

3.5. State employees are prohibited under WAC 292-110-010 from using state resources to conduct an outside business or private employment. WAC 292-110-010(6)(a) reads:

Prohibited uses. The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources.

(a) Any use for the purpose of conducting an outside business or private employment; ...

3.6. Based on Findings of Fact 2.3 and 2.5, ██████████ used state resources in violation of WAC 292-110-010(6)(a).

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.

II. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is an aggravating factor that ██████████ had previously been reprimanded by the WSDOT for personal use of the Internet. In July 2000, ██████████ received a letter of reprimand that instructed him not use his state computer to send or forward email messages or to access Internet sites unrelated to state business.

2. It is a mitigating factor that Mason resigned his position with the WSDOT.

III. AGREED ORDER

██████████ will pay a civil penalty in the amount of one thousand dollars (\$1,000). Failure to pay this penalty in accordance with a payment plan established between the parties will cause this stipulation to be void.

CERTIFICATION

I, ██████████ 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.



Respondent

Stipulated to and presented by:

Susan Harris 10/12/06

Susan Harris

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 13 day of October, 2006.

Trish Akana

Trish Akana, Chair

Approved via telephone

Evelyn Fenson, Vice-Chair

Judith Golberg

Judith Golberg, Member

Neil Gorrell

Neil Gorrell, Member

Kyle Usrey

Kyle Usrey, Member

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

[REDACTED] Respondent

Date