

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2009-013

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld 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 February 9, 2009, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld an Office Support Supervisor for the state Department of Social and Health Services, may have violated state law when she used state resources for personal benefit. The Board reviewed this referral and issued a complaint on June 12, 2009.

1.2. On November 12, 2010, upon receiving the Board staff's preliminary investigative report and recommendation, the Board made the determination that there was reasonable cause to believe that Withheld had committed one or more violations of chapter 42.52 RCW, and that the potential penalty was in excess of \$500.00.

1.3. 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.

1.4. [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. [Redacted] 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.

1.6. [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 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.

1.7. If the Board accepts this stipulation, the Board will release and discharge [Redacted] [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. [Withheld] 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 [Withheld] 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 [Withheld] does not accept the Board's proposed modification(s), if any, [Withheld] 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, [Withheld] 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. [Withheld] is an Office Support Supervisor for the state Department of Social and Health Services.

2.2. On July 31, 2008, the State Auditor's Office (SAO), received a Whistleblower Complaint alleging that [Withheld] was using state resources for personal gain.

2.3. During its investigation of the Whistleblower complaint, the SAO found reasonable cause to believe an improper governmental action occurred by [Withheld] use of state resources to access websites of personal interest. Specifically, the SAO found that during the period of May 20, 2008 through August 14, 2008, [Withheld] accessed at least 320 non-work-related web sites over 39 working days; some days she accessed just one site but on another day she visited as many as 59 sites.

2.4. The SAO published its findings in Whistleblower Report No. 1000678 dated February 9, 2009 and referred the matter to the Executive Ethics Board (Board) on that date.

2.5. On June 12, 2009, the Board considered the SAO findings and initiated an ethics complaint.

### **Section 3: CONCLUSIONS OF LAW**

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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 2.5, [Withheld] 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, [Withheld] received a letter of reprimand.

4.2. Aggravating factors include: in July 2006 [Withheld] was counseled by her supervisor on inappropriate personal use of email; [Withheld] was responsible for providing direction on the appropriate use of state resources to her subordinate employees in an “expectations for clerical staff” document; and prior to this violation, [Withheld] conducted an administrative investigation into inappropriate use of the internet by a subordinate. Additional aggravating factors are that the use was continuing in nature; the violation was intentional and [Withheld] has significant supervisory responsibilities.

**Section 5. AGREED ORDER**

5.1. For the violation of RCW 42.52.160, [Withheld] 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, [Withheld] 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.

[Withheld]

10-28-11

Date

Respondent

Stipulated to and presented by:

Melanie deLeon 11-3-11

Melanie deLeon  
Executive Director

Date

**II. ORDER**

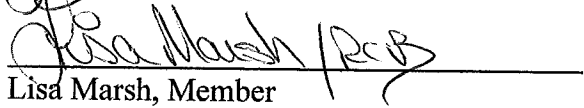
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

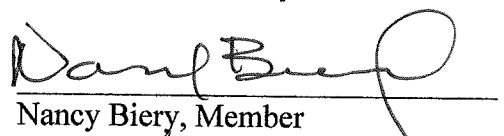
✓ ACCEPTED in its entirety;  
           REJECTED in its entirety;  
           MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves\* the following modification(s):

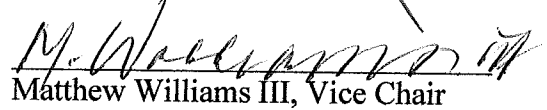
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DATED this 18<sup>th</sup> Day of November 2011.

  
Linnæa Jablonski, Member

  
Lisa Marsh, Member

  
Nancy Biery, Member

  
Matthew Williams III, Vice Chair

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

Withheld \_\_\_\_\_ Respondent \_\_\_\_\_ Date \_\_\_\_\_