

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2009-055

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 July 6, 2009, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld a Secretary Senior for the 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 November 13, 2009.

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. Withheld 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. [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.

1.5. [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] [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 [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 a Secretary Senior for the Department of Social and Health Services (DSHS).

2.2. 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 25 non-work-related folders in Ms. [Withheld] computer files. The folders contained jokes, ethnic activities, personal letters, pictures and directions to a yard sale, PowerPoint presentations and information for Ms. [Withheld] personal entertainment company, a festival membership list and a resume.

2.3. The SAO also found that from September 29, 2008 to December 31, 2008 Ms. [Withheld] visited non-work-related sites on 45 dates. These sites consisted of her personal email account, credit union, history sites, movies, an on-line auction service and a retailer. Ms. [Withheld] also accessed her personal email account and sent 92 personal email messages containing personal pictures, jokes, personal insurance transactions and invoices, flyers, forms and an ethnic festival that pertained to her personal business.

2.4. Ms. [Withheld] was given permission by her supervisor to work on the Festival Mexicanas while she was at work. It was initially felt that her involvement would improve the relationship between the Wenatchee DCFS office and the Latino community. Over the last seven years, her time spent on this event has been reduced and she has taken annual leave to work on the festival for the last couple of years. She saved the festival membership list on her computer because she had permission to work on the festival during work hours.

2.5. Ms. [Withheld] asserts that she is an asset to the DSHS office because she has lived in the area for over 19 years and has many connections to ethnic activities. Ms. [Withheld] also asserts that she forwards ethnic activity information to staff so they can forward it to foster parents and caregivers and that this information is valuable in providing ethnic and cultural needs for DSHS clients.

2.6. Ms. [Withheld] is responsible for downloading pictures of CPS investigations and other pictures into FAMLINK. Before Ms. [Withheld] downloaded these pictures into FAMLINK, she saved them on her computer drive.

2.7. On June 25, 2009, DSHS issued a written reprimand to Ms. [Withheld] for her personal use of state resources.

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 2.7, [Withheld] used state resources in violation of RCW 42.52.160 and WAC 292-110-010. De minimis use of state resources is not permitted to conduct an outside business.

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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

4.1 It is a mitigating factor that because of this behavior, [Withheld] received a letter of reprimand. It is also a mitigating factor that Ms. [Withheld] supervisor approved her use of state resources to work on the ethnic festival.

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 dollars (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) on the condition that [Withheld] 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 two years from the date this agreement is executed.

5.2. The civil penalty of \$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



[Handwritten signature]
3/2/2011
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Respondent

Stipulated to and presented by:

Melanie deLeon 3-3-11

Melanie deLeon
Executive Director

Date

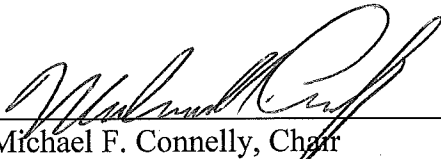
II. ORDER

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

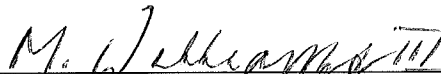
- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This Stipulation will become the Order of the Board if the

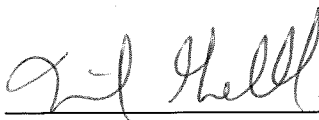
Respondent approves* the following modification(s):

DATED this 11th day of March, 2011.


 Michael F. Connelly, Chair


 Linnaea Jablonski, Member


 Matthew Williams III, Member


 Neil Gorrell, Member

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

Withheld _____ Respondent _____ Date _____