

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:



Respondent.

No. 10-022

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 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. In March 2010, the Executive Ethics Board received a referral from the Office of Minority and Women's Business Enterprises (OMWBE) alleging that [REDACTED] violated the Ethics in Public Service Act when he used his state resources (agency time, computer and email) during work hours to conduct unauthorized and non-agency related activities. The Board reviewed the referrals and issued a complaint on May 28, 2010. The Board found Reasonable Cause on November 12, 2010.

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. [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 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 [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. OMWBE has employed [REDACTED] as a Program Specialist since June 1, 2006.

2.2. A review of [REDACTED] state computer from June of 2008 to March 2, 2010 revealed that [REDACTED] used the agency computer and agency time for personal interests. [REDACTED] computer contained personal photos, including ten family portraits. It also contained documents regarding his work with the Cub Scouts (six documents), religious lessons (six documents), [REDACTED] Labor and Industries claim (four documents), a notice of a small claims court case and a document regarding an personal estate inheritance.

2.3. [REDACTED] computer also contained music files (33 files) and a letter to his son while he was on a mission to Mexico. Evidence also indicated that [REDACTED] had several applications for academic scholarships for his children.

2.4. [REDACTED] also operated an outside chiropractic business. His computer contained a copy of the Hawaii Chiropractic Licensure Requirements, Chapter 442 Hawaii Revised Statutes. However, there was no evidence on [REDACTED] computer to indicate he had used state resources to further his chiropractic business in any way.

2.5. On June 1, 2006, [REDACTED] signed the OMWBE Policy regarding Internet Usage, Computer Software Usage and Electronic E-Mail Usage effective January 30, 2006. On May 11, 2009, [REDACTED] signed the OMWBE Internet Usage, Computer Software Usage and Electronic E-Mail Usage policy (effective January 29, 2009) indicating that he read and understood the policy. This policy establishes procedures for authorized use of OMWBE computer systems to communicate outside the agency via the Internet, computer software to perform job duties within the agency and communication outside the office using electronic e-mail and defines limitations on such usage.

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.

3.4. RCW 42.52.160 prohibits a state officer or employee from using state resources for personal benefit.

3.5. Based on Findings of Fact 2.2 – 2.4, [REDACTED] used state resources for personal benefit in violation of RCW 42.52.160 and WAC 292-110-010

3.7. Under RCW 42.52.360, the Board is authorized to impose sanctions for violations to the Ethics Act. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGREED ORDER

5.1. For the violation of RCW 42.52.160, Les Ling will pay a civil penalty of two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend one thousand dollars (\$1,000.00) 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 from the date this agreement is executed.

5.2. The civil penalty of \$1,500 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, [REDACTED] 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.

[REDACTED]

8/16/13
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 9/9/13

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 15th day of September, 2013.

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek-Ross
Anna Dudek-Ross, Vice Chair

M. Williams III
Matthew Williams III, Member

Samantha Simmons
Samantha Simmons, Member

[Redacted] (circle one) the proposed modification(s).

8/16/13
Date