

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2010-062

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 June 22, 2010, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld a Correctional Records Technician at the Department of Corrections (DOC), may have violated state law when she used state resources for personal benefit. The Board reviewed this referral and issued a complaint on September 17, 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 Correctional Records Technician for the Department of Corrections (DOC). Ms. [Withheld] has worked for the state over 24 years and has not received any discipline during that time.

2.2. On June 17, 2009, the State Auditor's Office (SAO) received a Whistleblower Complaint alleging that [Withheld] failed to report leave time taken and used state equipment and resources for personal benefit.

2.3. During its investigation of the Whistleblower complaint, the SAO found reasonable cause to believe an improper governmental action occurred when [Withheld] used state resources to pursue personal interests and did not accurately submit leave slips. The SAO completed their preliminary investigation and referred the investigation to DOC.

2.4. The SAO listed 27 dates and times between September 2008 and May 2009 when Ms. [Withheld] was alleged to have taken leave but had not turned in a leave slip. The DOC investigation found that of the 27 instances questioned, evidence corroborated the allegation three times, contradicted the allegation six times, and neither corroborated nor contradicted the

allegation 18 times. Of the three corroborations, one day was a state holiday. Ms. [Withheld] is not expected to turn in leave on a state holiday. Ms. [Withheld] did not turn in leave slips for September 19, 2008 and December 22, 2008. She states she attempted to submit a leave slip on September 19, 2008 but her computer kept crashing (a new system had just come on line) and that she was unsuccessful and forgot to submit the leave slip. She asserts she did not turn in a leave slip on December 22, 2008 because she had permission to take the day off due to weather conditions. DOC was unable to corroborate that that permission was granted.

2.5 A review of Ms. [Withheld] email revealed five personal emails sent and five received. Except for one, all emails were very brief.

2.6. DOC reviewed Ms. [Withheld] internet use from August 1 to September 26, 2009 and found that the websites appear to be work related.

2.7. DOC found 18 personal documents on Ms. [Withheld] state computer. Ms. [Withheld] explained that her daughter prepared the documents. The 18 documents were created on 16 different dates between December 15, 2005 and September 24, 2009.

2.8. On December 21, 2009, DOC issued a Memorandum of Expectation to [Withheld] [Withheld] concerning her personal use of state owned equipment and the email system.

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. The Ethics in Public Service Act allows for *de minimis* personal use of state resources. WAC 292-110-010 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. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources.

3.6. Based on Findings of Fact 2.1 through 2.8, [Withheld] violated RCW 42.52.160 and WAC 292-110-010 when she allowed her daughter to use her state computer and failed to submit leave slips on two occasions. Ms. [Withheld] use of her state computer to send/receive email and use the Internet meets the criteria for *de minimis* use of state resources.

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 Memorandum of Expectation.

Section 5. AGREED ORDER

5.1. For the violation of RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) 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 \$250.00 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
[Redacted Signature]

3/4/2011
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 3/8/11
Melanie deLeon 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

 X

ACCEPTED in its entirety;

REJECTED in its entirety;

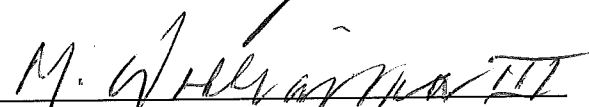
MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):


DATED this 11th day of March, 2011.



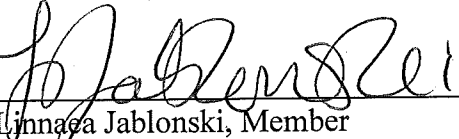
Michael F. Connelly, Chair



Matthew Williams III, Member



Neil Gorrell, Member



Ijnnaea Jablonski, Member

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

Withheld _____ Respondent _____ Date _____