

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2010-065

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 August 12, 2010, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld a former employee of the Department of Social and Health Services, Developmental Disability Division, may have violated state law when she worked simultaneously for a private non-profit organization during her scheduled state work hours. The Board reviewed this referral and issued a complaint on September 17, 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. [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. [Withheld] 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. [Withheld] 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 [Withheld] [Withheld] 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. The Board will not refer this matter to any other state or federal agencies, including law enforcement agencies. [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.

1.7. 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.

1.8. 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, this matter will be scheduled for an administrative hearing in front of the Board and [Withheld] waives any objection to the Board members who heard this stipulation participating in this hearing. 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. At all times pertinent to this matter, [Withheld] was a Resource Case Manager in the Developmental Disability Division of the Department of Social and Health Services (DSHS).

2.2. Ms. [Withheld] began working part-time for DSHS in 1994. In 1995, Ms. [Withheld] also began working for a private non-profit organization, initially working 20 hours per week. In 1996, DSHS approved her outside employment. She transitioned to a full-time position with DSHS and eventually her hours at the non-profit increased to 30 hours per week. Her work schedules were as follows:

- DSHS – four 10-hour days, Monday – Thursday, 8 a.m. to 6:30 p.m. Ms. [Withheld] was an exempt employee until 2/1/2009 when her status was changed to overtime eligible.
- Non-profit – Monday - Wednesday, 4 hours per day in the afternoon; 12 hours on Friday and 6 hours on Saturday.

2.3. The only hours at issue are those hours that Ms. [Withheld] worked for the non-profit that overlapped with her regularly scheduled DSHS hours, a total of 12 hours per week (four hours per day Mon-Wed). Further, the only timeframe within the Board's jurisdiction pursuant to RCW 42.52.540 falls between September 17, 2005 (the date the complaint was initiated by the Board) – June 10, 2009 when Ms. [Withheld] resigned from her state position.

2.4. Ms. [Withheld] worked for the non-profit organization Monday-Wednesday in the afternoon, oftentimes taking DSHS files home and completing her DSHS work in the evenings or on the weekend. Ms. [Withheld] did not have permission from her DSHS supervisor to remove confidential files from the office nor work from home, nor did Ms. [Withheld] advise anyone that she was doing this. Ms. [Withheld] did not have a DSHS Telework agreement in place or the required approval from DSHS to work from home. At the same time, there has never been a complaint nor concern raised that Ms. [Withheld] was neglecting her duties for DSHS. She has consistently received positive performance evaluations.

2.5 The SAO's Whistleblower investigation documented 2402 hours between January 1, 2006 and the date of Ms. [Withheld] resignation in 2009 that overlapped. Her average hourly rate

for this timeframe was \$26.64, for a total of \$63,989.28 in wages. The SAO further documented benefits, and determined that for this timeframe, Ms. [Withheld] was paid \$73,505.24 in wages and benefits by DSHS when she was actually working at and/or for the non-profit organization.

2.6 The SAO's Whistleblower investigation documented \$4357.70 in travel miles that Ms. [Withheld] billed DSHS for travel that she completed for the non-profit organization.

2.7 Ms. [Withheld] position was funded with both state and federal dollars. The state funded 11 percent through state only funds and 38 percent through Medicaid matching funds. Federal Medicaid dollars funded the remaining 51 percent. Based upon these percentages, Ms. [Withheld] received \$38,152.84 from state funds for wages, benefits and travel accomplished during the hours she worked at or for the non-profit organization.

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.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state resources for personal benefit.

3.4. 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. No de minimis use of state resources is permitted to conduct an outside business.

3.5. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

Section 4. AGREED ORDER

4.1. For the violations of RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of ten thousand dollars (\$10,000.00). The civil penalty 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]

2/21/2011
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 3-1-11

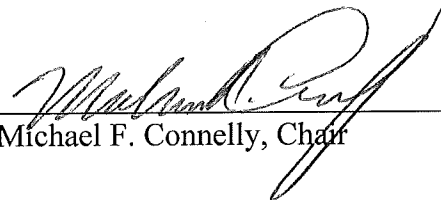
Melanie deLeon Date
Executive Director

II. ORDER

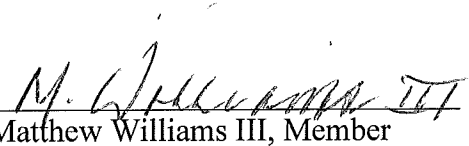
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

 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):

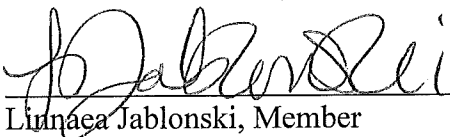
DATED this 11th day of March, 2011.




Michael F. Connelly, Chair



Matthew Williams III, Member



Linnæa Jablonski, Member



Neil Gorrell, Member

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

Withheld _____ Respondent _____ Date _____