

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 11-002

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. On January 3, 2011, the Executive Ethics Board received a complaint alleging that [REDACTED] an employee of the Washington State Department of Transportation (WSDOT), may have violated state law when she used her state computer for personal benefit. The Board staff referred the complaint to WSDOT for investigation.

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 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] 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. [REDACTED] is employed by WSDOT.

2.2. WSDOT reviewed all available emails in [REDACTED] state-provided Outlook account, all files and folders on [REDACTED] state-assigned computer, all files and folders on [REDACTED] assigned network drive, and 90-days of Internet activity (October 17, 2010 through January 19, 2011) under [REDACTED] user identification.

2.3. The review of [REDACTED] email account found 1,618 personal emails sent by [REDACTED] from June 14, 2010 through January 18, 2011, to co-workers, friends and relatives. [REDACTED] used her state computer to read her novel, "Million Dollar Sea Dreams" on her breaks and lunch, making edits to the novel while she read. She sold between five and six copies to co-workers at \$15 each, collecting the money and placed one order to save shipping costs.

2.5. [REDACTED] used the state email system to send/receive emails regarding some aspect of her book, including the design of the book cover, when it would be published, how it would be published and the edit process. There was also an email conversation about a book signing at a bookstore in Shelton, WA. Such use is far beyond the de minimis use allowed by

RCW 42.52.160 and WAC 292-110-010. Further, use of state resources to support an outside business is strictly prohibited and not subject to the de minimis rule.

2.6 [REDACTED] sent her second book, titled "Wine Corks" from her home computer to her state computer to read and edit on her breaks and at lunchtime.

2.7. [REDACTED] admits that she wrote eight personal word documents that she saved to her network drive and sent six of them over her state-provided email to her personal email address. She stated she never accessed her personal blog accounts through the state computer system. She also sent 13 emails on her state email account related to hosting a party for a home based jewelry company and accessed shopping websites using state-provided Internet access.

2.8 [REDACTED] sold one of her books to her supervisor and one to her director. She stated that she completed all of the work on her novels on her breaks or at lunchtime. She stated that she was not told that her conduct was unethical.

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. 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 2.8, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

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

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is mitigating factor that [REDACTED] was suspended without pay for three days; her loss in wages was \$868.00.

Section 5: AGREED ORDER

5.1. For the violation of RCW 42.52.160, [REDACTED] will pay a civil penalty of four thousand dollars (\$4,000.00). The Board agrees to suspend two thousand-eight hundred dollars (\$2,800.00) 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 \$1,200.00 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, [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]

2/21/12
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 2/27/12

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:

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

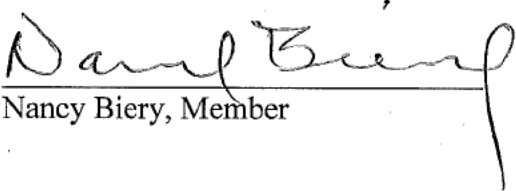
Respondent approves* the following modification(s):


DATED this 16th day of March 2012.



Matthew Williams III, Chair


Linnaea Jablonski, Member


Lisa Marsh, Vice-Chair


Nancy Biery, Member

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

 Respondent _____ Date _____