

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

NO. 2011-005

STIPULATED FACTS,
CONCLUSIONS AND ORDER

Respondent.

STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld represented by MICHAEL HANBEY, Attorney at Law, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) represented by LINDA A. DALTON, Senior Assistant Attorney General. 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 29, 2011, the Executive Ethics Board (Board) received an anonymous complaint alleging that Respondent Withheld the Acting State Certification Manager, IS and Administrative Support Manager for the Office of Minority and Women's Business Enterprises (OMWBE) may have violated the Ethics in Public Service Act, RCW 42.52, by using her position to provide a special privilege to family members. The Board initiated an investigation on March 11, 2011. The Board amended the complaint on November 18, 2011 to add a second allegation that

Ms. Withheld used her position and state resources to provide a different family member a special privilege and private benefit.

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. Ms. Withheld acknowledges 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 for each violation found, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. Ms. Withheld acknowledges that based on the evidence available to the Board Staff, 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. Ms. Withheld waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or 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 respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during

formal settlement discussion 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 Ms. [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. Ms. [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 Ms. [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. Furthermore, any and all stipulations by Ms. [Withheld] are for the sole purpose of settling this matter and are not admissible or stipulated to for any other purpose than the ethics board proceedings.

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 Ms. [Withheld] does not accept the Board's proposed modification(s), if any, Ms. [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, Ms. [Withheld] understands and agrees that if this proposed Stipulation, with any applicable modification by the Board, is rejected by Ms. [Withheld] this 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] was employed by OMWBE in a management position for all times pertinent to this investigation. In December 2010, she supervised Management Analysts, Administrative and Office Assistant positions. In March 2009, she was the Systems Administrator and Administrative Support Manager.

2.2. On March 24, 2009, Ms. [Redacted] sent an email to all OMWBE staff requesting that employees donate shared leave to her daughter to cover the time between March 24, 2009 and July 27, 2009 so that her daughter could stay home due to a high-risk pregnancy. The email stated in pertinent part:

My daughter. . . [A]s you all are aware she is pregnant and was recently diagnosed with . . . [T]hese conditions can be fatal to her and her unborn baby. The doctors have asked her to slow down until they feel it's safe to deliver the baby. She is in the beginning of her 5th month and we are hoping and praying she and the baby will make it until July 27th. She was recently approved from her office to receive shared leave beginning now. My request from you is, would anyone be willing to share some leave with her to get her through this rough time. Any little bit will help and would be forever greatly appreciated. I have attached the form for you to use, if you would like to help.

2.3. During an agency staff meeting on December 6, 2010, OMWBE staff raised the idea of adopting a family for the holiday for whom they would purchase gifts. This had been a practice of the agency in the past and staff agreed to do so.

2.4. Ms. [Redacted] announced that she knew of a family in need. The family consisted of a husband, wife and two minor children. Ms. [Redacted] did not reveal the name of the family at that time.

2.5. Ms. [Redacted] posted a list of requested gifts and agency personnel selected the gifts they wanted to buy for the family members. Staff purchased gifts on their own time and brought them to the OMWBE offices. On December 20, 2010, staff wrapped the gifts during their lunch hour. Ms. [Redacted] and two OMWBE staff members delivered the gifts to the family.

2.6. On December 29, 2010, Ms. [Withheld] provided OMWBE staff with a note identified from "Jason, Sarah, Branden and Alyssa" thanking the OMWBE staff for the presents and their generosity. It was at this point that the Acting Director and other OMWBE staff found out that the family receiving the presents was Ms. [Withheld] son, daughter-in-law and two grandchildren.

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. Ms. [Withheld] stipulations to the following conclusions of law are for the sole purpose of reaching settlement in this matter and are limited to these proceedings. These stipulations and conclusions are not admissible for any other purpose or proceedings.

3.4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using their position to provide a special privilege to themselves or other persons. RCW 42.52.070, Special privileges, states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

Ms. [Withheld] used her position with OMWBE to provide a special privilege to her son and his family.

Ms. [Withheld] further used her position to personally solicit her subordinates to donate shared leave to her daughter.

3.5. Based on Findings of Fact 2.1 through 2.6 [Withheld] violated RCW 42.52.070.

3.6. The Board is authorized to impose sanctions for violations of 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.

II. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is an aggravating factor that [Withheld] had significant official, management, or supervisory responsibility. WAC 292-120-030(3)(d)

III. AGREED ORDER

[Withheld] agrees to and the Board orders that she will pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500.00) within thirty (30) days after this stipulation is accepted by the Board.

CERTIFICATION

I, [Withheld] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my undersigned counsel of record has fully explained the legal significance and consequence of it; that I fully understand and agree to all terms contained in this Stipulation and Order; and that this Stipulation may be presented to the Board without appearance from myself or my undersigned counsel. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts this Stipulation and Agreed Order, I understand that I will receive a signed copy.

[Withheld]
[Redacted Signature]

9/11/12
Date

Respondent

[Handwritten Signature] 11 Sept 12
Michael Hanbey Date
Counsel for Respondent

Stipulated to and presented by:

[Handwritten Signature] 9/13/12
Melanie de Leon Date
Executive Director

[Handwritten Signature] 9/13/12
Linda A. Dalton Date
Senior Assistant Attorney General
Counsel for Board Staff

IV. 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 14th day of September, 2012.

Matthew Williams III
Matthew Williams, III, Chair

Lisa Marsh
Lisa Marsh, Vice-Chair

Linnaea Jablonski
Linnaea Jablonski, Member

Anna Dudek Ross
Anna Dudek Ross, Member

Michael Bahn
Michael Bahn, Member

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

Withheld Respondent _____ Date _____