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7 **BEFORE THE WASHINGTON STATE**
8 **EXECUTIVE ETHICS BOARD**

9 In the Matter of:

OAH Docket No. 2012-EEB-0006
EEB No. 2011-015

10 [REDACTED]
11 [REDACTED]
12 Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
FINAL ORDER

13
14 **I. PROCEDURAL HISTORY**

15 1.1 The Executive Ethics Board (Board) staff received three complaints on
16 February 16, 2011, March 1, 2011, and March 21, 2011 alleging that [REDACTED]
17 Communications and Outreach Director for the Department of Corrections (DOC), may have
18 violated the Ethics in Public Service Act, chapter 42.52 RCW, by using state resources to
19 promote and support non-profit organizations and may have used her position to secure special
20 privileges for herself or other persons.

21 1.2 On September 9, 2011, the Board found reasonable cause to believe that a
22 violation of the Ethics in Public Service Act occurred.

23 1.3 A prehearing conference, in which all parties participated, was held on May 21,
24 2012 with an Administrative Law Judge (ALJ) presiding pursuant to RCW 42.52.500.

25 1.4 After due and proper notice, a two-day hearing was held before the Board. The
26 hearing was held at the Board offices at Bristol Court in Olympia, Washington, convening on
January 9, 2013 at 9:00 AM. ALJ Alice L. Haenle from the Office of Administrative Hearings

1 conducted the proceedings, and Board Chair Lisa Marsh, Vice Chair Anna Dudek Ross, and
2 members Michael Bahn, Matthew Williams III, and Samantha Simmons were present. Also
3 present was Bruce L. Turcott, Assistant Attorney General, legal advisor to the Board.

4 1.5 Board staff was represented by Chad Standifer, Assistant Attorney General.
5 The Board's Executive Director Melanie de Leon and other Board staff members were present.

6 1.6 Respondent [REDACTED] was present and represented by G. Saxon Rogers,
7 attorney at law.

8 1.7 Board Staff offered Exhibits 1-38, which included Exhibits 24a and 27a. All
9 were admitted into evidence. The Board was provided copies of documents that were admitted
10 as exhibits.

- 11 1. [REDACTED] Department of Corrections (DOC) Employment History
12 (1 page);
- 13 2. [REDACTED] DOC "Communications and Outreach Director"
14 Position Description dated July 27, 2010 (6 pages);
- 15 3. [REDACTED] DOC "Communications and Outreach Director"
16 Position Description dated May 18, 2009 (7 pages);
- 17 4. DOC Communications Department Organization Chart dated April 22,
18 2010 (1 page);
- 19 5. E-mail from Benjamin McDonald (DOC) regarding "Reentry Program
20 Manager" job duties dated April 30, 2008 (2 pages);
- 21 6. Washington Secretary of State Certification of Existence of *National*
22 *Association of Women in Criminal Justice* dated July 26, 2011, and
23 related documents filed with Secretary of State (10 pages);
- 24 7. Washington Secretary of State Certificate of Delinquency of *Faith*
25 *Based Reentry Coalition of Washington State* dated July 26, 2011, and
26 related documents filed with Secretary of State (6 pages);
8. Washington Secretary of State information regarding the *Washington*
Chapter of the National Association of Blacks in Criminal Justice (3
pages);
9. Washington Department of Licensing information regarding [REDACTED]
[REDACTED] as a sole proprietor dated August 19, 2011 (1 page);

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- 10. DOC Policy Number 860.200, *Employment/Volunteering of Relatives/Household Members* dated November 20, 2008 and December 28, 2009 (4 pages);
- 11. [REDACTED] Outlook Calendars, January 2008 to June 2011 (42 pages);
- 12. Summary of Tanya Nozawa's work and Outlook Calendars (72 pages);
- 13. Rowlanda Cawthon's Outlook Calendars, January 2008 to June 2011 (42 pages);
- 14. Maria Peterson's Outlook Calendars, January 2008 to June 2011 (42 pages);
- 15. Melissa Johnson's Outlook Calendars, January 2008 to June 2011 (42 pages);
- 16. Fax from Thomas DeLong to DOC Secretary Eldon Vail dated February 8, 2011 (2 pages);
- 17. Miscellaneous Documents regarding NAWCJ (23 pages);
- 18. Email from Melissa Johnson dated February 19, 2010 regarding the NAWCJ Conference (2 pages);
- 19. Miscellaneous documents regarding NAWCJ (39 pages);
- 20. Miscellaneous documents regarding NAWCJ events (13 pages);
- 21. DOC Travel and Expense Management System TVS History Report regarding travel by [REDACTED] for NAWCJ (9 pages);
- 22. Miscellaneous documents regarding Faith Based Reentry Coalition (39 pages);
- 23. Miscellaneous documents relating to the National Institute of Corrections (NIC) New Warden training (18 pages);
- 24. DOC Policy Number 850.025, *Outside Employment/Volunteer Activities* dated March 1, 2010 (4 pages);
- 24a. DOC Policy Number 850.025, *Outside Employment/Volunteer Activities* dated November 19, 2007 (4 pages);
- 25. DOC Policy Number 290.400, *Fundraising to Support Charities* dated September 18, 2007 (3 pages);
- 26. DOC Policy Number 800.020, *Use of State Resources* dated March 4, 2011 (6 pages);
- 27. DOC Policy Number 800.010, *Ethics* dated December 11, 2006 (5 pages);

- 1 27a. DOC Policy Number 800.010, *Ethics* dated March 8, 2008, April 17,
2 2009, and August 6, 2010 (16 pages);
- 3 28a. E-mail from Dell-Autumn Witten to Kathy Smith dated October 4, 2010,
4 with attached draft of *Use of State Resources* policy (6 pages);
- 5 b. E-mail from Dell-Autumn Witten to Kathy Smith dated October 15,
6 2010 with attached draft of *Use of State Resources* policy; and E-mail
7 from E-mail from Dell-Autumn Witten to [REDACTED] and Secretary
8 Eldon Vail dated October 15, 2010 with attached draft of *Use of State*
9 *Resources* policy (14 pages);
- 10 c. E-mail from [REDACTED] to Secretary Eldon Vail and Kathy Smith
11 dated October 18, 2010 (1 page);
- 12 d. E-mail from Kathy Smith to Dell-Autumn Witten dated November 9,
13 2010 with attached draft of *Use of State Resources* policy (7 pages);
- 14 e. E-mail from [REDACTED] to Dell-Autumn Witten dated December 9,
15 2010, and e-mail from Kathy Smith dated November 17, 2010 to DOC
16 Leadership Team (2 pages);
- 17 29. Memorandum of Understanding between DOC and NAWCJ dated
18 March 10, 2011 and miscellaneous documents (10 pages);
- 19 30. Documents regarding Gozart retirement party (7 pages);
- 20 31. [REDACTED] DOC Training Record dated August 18, 2011 (5 pages);
- 21 32. DOC Policy Number 830.100, *Leave* dated October 30, 2008 (12 pages);
- 22 33. [REDACTED] Leave History (5 pages);
- 23 34. DOC Internal Investigative Report (559 pages);
- 24 35. Preliminary Investigation and Board Determination in Case No. 2011-
25 015, Belinda Stewart, dated September 9, 2011 (26 pages);
- 26 36. Response to Reasonable Cause Determination dated September 28, 2011
(79 pages);
37. Deposition Transcript of [REDACTED] dated November 14, 2012 (74
pages); and
38. Complaints filed with Executive Ethics Board by Michael Hanbey on
February 16, 2011 (2 pages), Senator Mike Carrell on March 21, 2011
(151 pages), and Anonymous Complainant on March 1, 2011 (114
pages).

1 1.8 Respondent offered Exhibits A-K. All were admitted into evidence. The Board
2 was provided copies of documents that were admitted as exhibits.

- 3 A. Written response of [REDACTED] with exhibits, to accusations from
4 EEB dated October 6, 2011 (pages A-1 through A-63);
- 5 B. Deposition transcript of Melanie de Leon dated October 19, 2012 (pages
6 B-1 through B-95);
- 7 C. Notification from Secretary Vail regarding appointment of [REDACTED]
8 [REDACTED] as Communications Director dated May 6, 2008 (pages C-1
9 through C-3);
- 10 D. Letter from NABCJ acknowledging Secretary Vail's authorization of
11 attendance at the National Conference dated August 23, 2000 (pages D-
12 1 through D-2);
- 13 E. Directives to the deputies group from Superintendent [REDACTED]
14 regarding attendance of NABCJ and WCA annual conference dated June
15 16, 2003 (pages E-1 and E-2);
- 16 F. Letter from [REDACTED] to Secretary Vail regarding participation in
17 NAWCJ dated July 28, 2012 (pages F-1 and F-2);
- 18 G. Memorandum of Understanding between DOC and NAWCJ dated
19 March 11, 2011, pages G-1 through G-3;
- 20 H. Memorandum of Understanding between DOC and WCA, dated March
21 11, 2011 (pages H-1 through H-3);
- 22 I. Email from Kathy Smith to [REDACTED] re: Ethics Board review and
23 Safe Harbor policies dated September 10, 2010 (pages I-1 through I-3);
- 24 J. Memo from [REDACTED] seeking authorization for State
25 reimbursement to attend NABCJ conference dated May 30, 2001 (page
26 J-1);
- K. Membership card of Scott Blonien for NABCJ dated expiration January
17, 2010 (page K-1).

1.9 The proceedings were recorded and open to the public.

1.10 The Board heard the testimony of Melanie de Leon, [REDACTED] Scott
Blonien, and Eldon Vail.

1.11 The hearing was adjourned on January 10, 2013.

Based on the evidence presented, the Board enters the following Findings of Fact,
Conclusions of Law and Final Order:

1 II. FINDINGS OF FACT

2 2.1 At all times pertinent to this matter, [REDACTED] was employed by DOC. In
3 May 2008, [REDACTED] became the agency's Communications and Outreach Director. The
4 objective of this position is to develop, coordinate and implement strategies for responding to the
5 press and communicating newsworthy items and to educate the public about the DOC and its
6 purpose and mission. The position also develops, coordinates, and implements communication
7 between DOC leadership and employees and develops relationships with the community.

8 2.2 National Association of Women in Criminal Justice (NAWCJ). The purpose of
9 NAWCJ is identified as to "focus on providing a professional association for individuals and
10 organizations with the common goal of enhancing the criminal justice profession for women."

11 [REDACTED] incorporated NAWCJ in September 2007. She is listed as the registered
12 agent and President. Her direct report, Maria Peterson, is listed on the 2009 Application for
13 Reinstatement of a Domestic Nonprofit Corporation form as the NAWCJ's Secretary. Both
14 [REDACTED] and Ms. Peterson list their addresses on this form as 7345 Linderson Way,
15 Tumwater [DOC Headquarters]. On the October 2010 renewal form, both [REDACTED] and
16 Ms. Peterson are listed in the same manner. In the June 2010 NAWCJ Newsletter, Rowlanda
17 Cawthon and Ms. Peterson are listed as Board members. Ms. Peterson is the Board Secretary
18 and Ms. Cawthon is Chair of the Membership Committee. Evidence indicates that all of the
19 NAWCJ Board members are DOC employees.

20 A review of [REDACTED] Outlook calendars from January 2008-June 2011 indicated
21 that she spent 42.5 state hours on matters related to NAWCJ. A review of her hard drive
22 revealed a folder entitled "Nat'l assoc. Women in Criminal Justice" containing 906 emails
23 dating back to August 2006. These emails were both ones sent and received by [REDACTED]
24 Many of the emails concerned planning for annual conferences and conversing with vendors
25 about conference details or to solicit vendors to attend.
26

1 A review of Tanya Nozawa's project log (a graphic designer who worked for [REDACTED]
2 [REDACTED] during this time) indicated that between May 2008 and September 2010, the designer
3 spent 90.8 hours designing brochures and recruitment documents for this organization using
4 state time, state computers, and state paper/ink. Rowlanda Cawthon's Outlook calendar
5 identified eight hours for NAWCJ; Maria Peterson's Outlook calendar indicated eight hours for
6 NAWCJ, and Melissa Johnson's calendar indicated that she had spent 11 hours for NAWCJ.

7 A review of documents provided by Ms. Peterson indicated that she [REDACTED] Ms.
8 Cawthon, and Ms. Johnson sent and received dozens of emails regarding the NAWCJ annual
9 conferences, including agendas, brochures, programs, guest speakers, and other conference
10 information. A review of documents provided by Ms. Johnson indicated that she kept an Excel
11 spreadsheet "checkbook" for NAWCJ and self-identified that she was also very involved with
12 the 2010 and 2011 NAWCJ conferences.

13 A review of documents provided by Ms. Cawthon indicates that [REDACTED] direct
14 reports sent out NAWCJ meeting minutes using the state email system as well as information
15 about the 2010 NAWCJ conference including the membership roster, conference budget, and
16 conference T-Shirt information.

17 In 2009, Ms. Peterson wrote an article for DOC's newsletter, *The Daily*
18 *Communique*, entitled, "Washington DOC Leaders Create National Association for Women in
19 Criminal Justice." The article states,

20 NAWCJ was born from the vision of Communications Director Belinda D. Stewart,
21 who started a Women's Conference when she was Superintendent at McNeil
22 Island Corrections Center in 1996. . . . With several charter members, the NAWCJ
23 is ready to open its membership to women worldwide. New member Rowlanda
24 Cawthon hopes to gain professional and personal benefits from NAWCJ. . . . The
25 association plans to host a conference in Olympia in March.

26 The NAWCJ sponsored several workshops and events. On March 24, 2010, it held an all-
day conference in Tumwater. Flyers indicated that [REDACTED] was one of the conference points of

1 contact and the flyer provided people with [REDACTED] DOC phone number to call for
2 information. Conference flyers and brochures soliciting membership and to sign up for the
3 conference were found on Ms. Stewart's hard drive

4 Evidence indicates that [REDACTED] tasked her direct reports with working on the NAWCJ
5 annual conference on state time, using state resources. In a February 19, 2010 email, Ms. Johnson
6 wrote:

7 *Greetings Ladies, I hope this finds each of you well and ready for this weekend! As
8 [REDACTED] Administrative Assistant she has tasked me with obtaining a short
9 bio from each of you for the upcoming NAWCJ conference. If you could please send
10 me one along with a photo of yourselves, by Wednesday of next week, I would be
11 most grateful.*

12 A review of [REDACTED] direct reports' emails indicates that [REDACTED] used state
13 resources to design the 2010 NAWCJ conference brochure and conference letter that was sent to
14 all participants.

15 [REDACTED] attended the March 2010 conference (scheduled from 8 a.m. to 4:15 p.m.)
16 without taking annual leave. One hundred forty-four DOC employees attended this
17 conference, making up almost 80 percent of the audience. The NAWCJ website stated that
18 DOC had approved taking administrative leave to attend NAWCJ functions. DOC's Leave
19 Policy 830.100 (revised 10/30/08), Section 1, General Requirements, describes twelve kinds of
20 leave employees may take that requires a leave form and prior approval; administrative leave is
21 not one of them. The only reference to administrative leave is found in Section XIII,
22 Professional Development: "The Department will encourage and provide administrative leave
23 for employees to attend professional meetings, conferences, seminars and workshops.
24 Employees will be responsible for his/her own expenses when state funds are unavailable."

25 DOC employees are not required to complete a leave form to request administrative
26 leave nor is it tracked in any system.

[REDACTED] was one of two presenters of a course entitled, "The Politics of Moving
Up," provided by the NAWCJ at Mission Creek Corrections Center on August 25, 2010. She

1 signed state vehicle license #18048E out at 10:20 a.m. and returned it at 8:30 p.m. for this
2 function. She did not take annual leave to attend this event.

3 On September 20, 2010, [REDACTED] checked out another state vehicle and drove to
4 Eastern Washington to present this same course on behalf of NAWCJ at Airway Heights
5 Corrections Center on September 21st and the same half-day workshop at Coyote Ridge
6 Corrections Center on September 22nd. She did not take annual leave for these events.

7 On May 5, 2011, documents indicate that [REDACTED] attended a NAWCJ event at the
8 "CCD Parkland office" between 8:30 a.m. and 10:30 am. She did not take annual leave to
9 attend this event.

10 [REDACTED] attended the June 16, 2011 NAWCJ conference held at the Thurston
11 County Fairgrounds from 8 a.m. to 4:30 p.m. She did not take annual leave to attend this
12 event. Over 100 people attended this conference; 87 percent of the attendees were DOC
13 personnel.

14 Meetings of the NAWCJ Board were routinely held in DOC facilities—usually the
15 DOC Headquarters in Tumwater. All of the NAWCJ Board members are DOC employees.
16 Evidence indicates that the minutes of these meetings were prepared on state computers, using
17 state time, and sent via the state email system to all board members. The NAWCJ's newsletter
18 was also distributed using the state system as was a DOC all-staff invitation to the 2011
19 NAWCJ conference. In fact, evidence indicates that a substantial portion of the 2010 and 2011
20 conferences were designed, advertised, promoted, and tracked using state time; state
21 computers, and state personnel.

22 2.3 National Association of Blacks in Criminal Justice (NABCJ). [REDACTED]
23 incorporated the Washington Chapter of the National Association of Blacks in Criminal Justice
24 in October 2001 as a nonprofit organization. WA-NABCJ went inactive as of February 2004.
25 In February 2009, Angleian Morton incorporated the WA State Chapter of the National
26 Association of Blacks in Criminal Justice as a nonprofit organization.

1 [REDACTED] is not listed on the second incorporation documents, but she was WA-
2 NABCJ's treasurer between 2008 and 2010. At the national level, she served as a Regional
3 Representative for two years and Conference Committee Chair for three years. According to
4 [REDACTED] she has not been active in NABCJ since 2009 and has not attended a meeting in
5 the last 8 months (as of June 2011). In July 2008, all but one WA-NABCJ Board member was
6 a DOC employee. Since October 2010, all WA-NABCJ Board members have been DOC
7 employees.

8 On June 16, 2011, DOC reviewed [REDACTED] DOC Outlook mailbox, which
9 contained over 43,000 emails. DOC found 2,920 e-mails in a folder entitled "NABCJ." The
10 primary folder contained 1,791 items including 448 sent by [REDACTED]. The most recent
11 email was dated 11-29-10; others date back to 2006. There is almost no activity after 2008,
12 with [REDACTED] only sending seven emails in 2009 and 2010, none in 2011. A sub-folder
13 entitled "NABCJ 2008 Conference" contained 925 of the emails; 111 sent by [REDACTED] who
14 was the conference chair. Another sub-folder entitled "Membership applications" contained
15 four emails sent by [REDACTED].

16 The DOC Travel and Expense Management System indicates:

- 17 a. DOC paid \$486.54 in per diem, lodging, mileage, and other travel expenses for
18 [REDACTED] to attend a NABCJ Board meeting in Dallas, TX, September 28-October 1, 2006.
- 19 b. DOC paid \$246.00 in per diem costs for [REDACTED] to attend the 34th Annual
20 NABCJ conference in Buffalo, NY, July 19-27, 2007. The voucher indicates that since [REDACTED]
21 was a National Board Member, as well as the Chief of Conference Planning & Operations,
22 then-DOC Secretary Harold Clarke authorized reimbursement of meals when the travel was
23 paid from a non-state source.
- 24 c. DOC paid \$648.94 in per diem and mileage for [REDACTED] to attend the 2007
25 Criminal Justice Conference in Vancouver, WA, a conference and training event hosted through a
26

1 partnership between NABCJ, Washington Correctional Association, NAWCJ, and the Washington
2 State Jail Association.

3 Secretary Harold Clarke authorized reimbursement of mileage (the voucher states that there
4 was no state car available), lodging, and per diem for four days.

5 A review of [REDACTED] Outlook calendars from January 2008-June 2011 indicated that
6 she spent 50.1 state hours on matters for NABCJ. Her calendar also indicated that she attended a
7 NABCJ Board Meeting in Orlando, Florida, April 3-4, 2008. She did not take annual leave to attend
8 this event.

9 [REDACTED] attended a NABCJ conference in Orlando between July 17 and July 25, 2008.
10 She did not take annual leave to attend this event. [REDACTED] was the Chair of the National
11 Conference in 2008.

12 A review of the graphic designer's project log indicated that between May 2008 and
13 September 2010, the designer spent less than one hour doing any kind of work for NABCJ. Ms.
14 Cawthon's Outlook calendar identified 22.5 hours for NABCJ; Ms. Peterson's Outlook calendar
15 indicated no hours for NABCJ.

16 Ms. Johnson's calendar indicated that she had spent no work time for NABCJ, although her
17 calendar indicated that she attended monthly meetings in the evening for NABCJ that were held
18 in DOC facilities. Ms. Johnson stated that she became a member of NABCJ and assisted [REDACTED]
19 [REDACTED] with the conference in 2006, attended the conference in Buffalo, NY in 2007, and was
20 very involved during her workdays with helping with the 2008 conference. She stated that her
21 "hands were all over" the 2008 conference. A review of documents she provided indicate that she
22 had hundreds of documents for the 2008 conference including seating charts, name tags, program
23 designs, agendas, signs, and menus. She kept spreadsheets on the conference budget, travel
24 arrangements, and expense reimbursements.

25 NABCJ meetings were routinely held after normal work hours in DOC facilities (the
26 Tacoma Community Justice Center). Between July 2008 and October 2010, NABCJ met after

1 normal work hours twelve times in DOC facilities; [REDACTED] only attended four of those
2 meetings. Evidence indicates that state employees used state resources to participate in NABCJ
3 conference calls during normal work hours.

4 Information regarding NABCJ meetings was sent via the state system, including
5 information about the national conferences, meeting agendas, and invitations to attend a birthday
6 BBQ and fundraiser in 2009. In March 2010, one of [REDACTED] direct reports emailed an ad
7 for the WA-NABCJ to the NABCJ for addition in the national conference program.

8 Evidence also indicates that [REDACTED] used the state email system to recruit members for
9 the NABCJ, or at least solicit their membership. [REDACTED] and several of her direct
10 reports used state time and the state system to design/edit conference programs/booklets, provide
11 ads to the National chapter for inclusion in conference programs, develop menus for conference
12 dinners, solicit presenters for conference dinners, and solicit presenters for conference workshops.
13 It appears that most of the 2008 NABCJ conference was designed and executed using state time,
14 state personnel, and state systems.

15 [REDACTED] used her direct reports to gather travel information for Orlando NABCJ
16 conference attendees. Further, a file of the 2008 NABCJ conference program was physically delivered
17 to the Mission Creek Corrections Center for Women where two of [REDACTED] direct reports
18 were at the time because the .pdf file was too big to send electronically. Her staff also designed
19 the bid sheets for the 2008 conference silent auction.

20 Evidence shows that state resources were also used to plan and track expenses for the
21 2010 NABCJ conference as well as membership dues, vendor confirmations, and conference
22 programs among other items.

23 2.4 Faith Based Reentry Coalition (FBRC). This organization was incorporated in
24 May 2009. On the 2009 Articles of Incorporation, [REDACTED] is listed as the "Incorporator" and
25 7345 Linderson Way, Tumwater, is listed as her business address. On the August 2010 renewal
26 form, [REDACTED] is listed as the Secretary, with Raymond Baribeau, from Bellingham, WA, as

1 the President. The purpose of FBRC states, "In conjunction with DOC and other service agencies,
2 will develop strategies that will engage faith communities in offender reentry."

3 According to information published in an article written by Rowlanda Cawthon and
4 published on the DOC intranet on or about June 2010, the FBRC is an organization of people
5 that seeks to develop strategies that engage faith communities in offender reentry. Working with
6 DOC, FBRC's goal is to make face-to-face connections with offenders immediately upon release
7 from prison. The article lists Mr. Baribeau as a Co-Chair. [REDACTED] is the other Co-chair. [REDACTED]
8 [REDACTED] states in this article, "I hope that DOC will continue to support and implement Baribeau's
9 Reentry Guide approach throughout Washington State."

10 In late 2008 and early 2009, [REDACTED] required her staff to design a logo for FBRC on
11 state computers and during state office hours. Approximately 50 different logos were designed
12 for [REDACTED] to present to FBRC for selection.

13 According to [REDACTED] Outlook calendars, she participates in quasi-regular FBRC
14 meetings. These meetings are usually held on a weekday morning at the Mezza Café in Seattle,
15 approximately 65 miles from DOC Headquarters. Between November 2008 and January 2011,
16 [REDACTED] met 16 times either at the Mezza Café or other locations and on at least four
17 occasions used a state vehicle for transportation to and from these meetings. Her Outlook
18 calendar indicated 73 hours allocated to FBRC.

19 [REDACTED] Outlook calendar also indicated that the Secretary of State Nonprofit
20 Renewal application was due, and she had assigned it to her subordinate, Ms. Johnson to
21 complete. Ms. Johnson's Outlook calendars indicated seven hours for FBRC.

22 A review of the projects completed by the DOC graphic designer who reported to [REDACTED]
23 [REDACTED] indicated that between December 2008 and March 2009, the designer used 15.5 work
24 hours to design logos for FBRC on a state computer at the request of [REDACTED]

25 2.5 New Warden Training. [REDACTED] engages in paid outside employment with the
26 National Institute of Corrections (NIC) as an instructor for their "New Wardens" course, for which

1 she was paid a \$2,800 fee plus \$1,200 expenses per year. This training occurs in various locations
2 throughout the United States. A review of [REDACTED] annual leave indicates that she took annual
3 leave to provide this training.

4 DOC policy 850.025, Outside Employment/Volunteer activities (last revision was 3/1/10),
5 requires employees to get approval from their appointing authority for all outside employment. It also
6 prohibits the use of any DOC resources for this employment. This policy further prohibits employees
7 from having business relationships with DOC employees in their chain of command. The policy also
8 requires employees to complete a DOC 03-026 Outside Employment/Volunteer Activity form and submit
9 it to their immediate supervisor. The supervisor then recommends approval or disapproval and forwards
10 the recommendation to the appropriate appointing authority for final approval or disapproval. No written
11 approval or DOC form 03-026 for [REDACTED] New Warden Training employment was found in her
12 personnel file, and she testified that she did not complete the form.

13 [REDACTED] work computer contains an e-mail folder entitled "NIC/New Warden" with 576
14 items dating back to October 25, 2006. It included 21 e-mails sent by [REDACTED] There was also a
15 "NIC" folder, a "NIC/NIC" folder, and a "Belinda/NIC" folder in her division's shared directory. DOC
16 policy 800.020, Use of Resources, and policy 850.025, Outside Employment, prohibit the use of state
17 resources for outside employment.

18 One of the sections [REDACTED] instructs in the New Warden Training is "Ethics and Integrity."

19 2.6. Retirement party. In 2010, [REDACTED] was involved in the planning and execution of a
20 retirement party for Diane Gozart. Ms. Gozart's retirement party was held on October 20, 2010 at the
21 Schmidt mansion in Tumwater. The cost was \$30 per person attending. Ms. Gozart's family attended for
22 free. Checks for the event were made payable to [REDACTED] purchased food and
23 decorations for the event. DOC employees prepared the food and decorated the venue. Evidence
24 indicated that ticket sales, plus donations from NAWCJ, totaled \$1,815. There is no evidence that any
25 state agency funds were used for the event. The rental of the mansion was \$330. Other expenses totaled
26 \$874.25, with the remaining monies going to Ms. Gozart as a cash gift. Evidence indicated that [REDACTED]

1 [REDACTED] paid four members of her church \$200 to work at the event, directing attendees where to sit and
2 helping clean up after the event.
3

4 III. CONCLUSIONS OF LAW 5

6 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
7 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,
8 with respect to employees in the executive branch of state government. The complaint was
9 filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW
10 42.52.420, and an adjudicative proceeding was conducted pursuant to RCW 42.52.430 and
11 .500. All the required procedural notices have been provided.

12 3.2 The Ethics in Public Service Act governs the conduct of state officers and
13 employees.

14 3.3 A state employee may not have interests that conflict with the proper discharge
15 of her duties under RCW 42.52.020, which states:

16 No state officer or state employee may have an interest, financial
17 or otherwise, direct or indirect, or engage in a business or transaction or
18 professional activity, or incur an obligation of any nature, that is in
19 conflict with the proper discharge of the state officer's or state employee's
official duties.

20 3.4 A state employee may not use her position to secure special privileges for
21 herself or other persons under RCW 42.52.070, which states:

22 Except as required to perform duties within the scope of
23 employment, no state officer or state employee may use his or her position
24 to secure special privileges or exemptions for himself or herself, or his or
25 her spouse, child, parents, or other persons.
26

1 3.5 A state employee may not use state resources for private benefit or gain
2 under RCW 42.52.160, which states:

3 No state officer or state employee may employ or use any person,
4 money, or property under the officer's or employee's official control or
5 direction, or in his or her official custody, for the private benefit or gain of
6 the officer, employee, or another.

7 3.6 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000
8 per violation or three times the economic value of anything received or sought in violation of
9 the Ethics in Public Service Act, whichever is greater. The Board may also impose the cost of
10 investigating the complaint and order restitution for any damages sustained by the state.

11 3.7 Based on the foregoing findings of fact, the Board determined that [REDACTED]
12 [REDACTED] did not violate RCW 42.52.020 with respect to the charges relating to being a founder,
13 officer, or using her direct reports to further the work of the FBRC, the National Association of
14 Women in Criminal Justice, or the National Association of Blacks in Criminal Justice. These
15 activities did not involve financial or other interests on the part of [REDACTED] that conflicted
16 with the proper discharge of her official duties.

17 3.8 Based on the foregoing findings of fact, the Board determined that [REDACTED]
18 [REDACTED] did not violate RCW 42.52.070 with respect to the charges relating to four individuals
19 from her church being paid to work at a DOC retirement party from non-agency funds that
20 were donated by other employees. This activity did not involve the use of any state funds.

21 3.9 Based on the foregoing findings of fact, the Board determined that [REDACTED]
22 [REDACTED] did not violate RCW 42.52.160 with respect to the charges relating to the National
23 Association of Women in Criminal Justice or the National Association of Blacks in Criminal
24 Justice. These activities did not involve the use of state resources for the private benefit or
25 gain of [REDACTED] or others because the purpose of the organizations was promotion of DOC
26 employee effectiveness. It appears there was too much time spent planning or participating in
activities for these professionalism non-profits, but that is an agency management

1 responsibility and not within the Board's jurisdiction. The Board notes a possible violation of
2 RCW42.52.130, relating to the NAWCJ paying for [REDACTED] hotel, but that was not
3 charged.

4 3.10 Based on the foregoing findings of fact, the Board determined that [REDACTED]
5 [REDACTED] violated RCW 42.52.160 with respect to the charges relating to the FBRC. These
6 activities involved the use of state resources for the private benefit of an unrelated
7 organization.

8 3.11 In determining the appropriate sanction, including the amount of any civil
9 penalty, the Board determined under WAC 292-120-030(2) that the nature of the violations
10 related to the FBRC:

11 (a) Was continuing in nature [despite direction to the contrary];

12 ...

13 (e) Tended to significantly reduce public respect for or confidence in
14 state government or state government officers or employees;

15 3.12 In determining the appropriate sanction, including the amount of any civil
16 penalty, the Board considered as an aggravating circumstance in relation to the FBRC, under
17 WAC 292-120-030(3), that [REDACTED]

18 (d) Had significant official, management, or supervisory responsibility;

19 3.13 In determining the appropriate sanction, including the amount of any civil
20 penalty, the Board considered, as a mitigating factor in relation to the FBRC, under WAC 292-
21 120-030(4), that:

22 (d) The violation was unintentional;

23 3.14 Based on the foregoing findings of fact, the Board determined that [REDACTED]
24 [REDACTED] violated RCW 42.52.160 with respect to the charges relating to the New Warden
25 Training. These activities involved the use of state resources for the private benefit or gain of
26 [REDACTED] The Board notes violations of RCW 42.52.020 and 42.52.070 as well, related to
the New Warden Training, but those were not charged.

1 of the Ethics in Public Service Act, Board rules, or employing agency rules for a period of two
2 years from the effective date of this Order.

3 4.3 For the violation related to the FBRC, the penalty is \$5,000.

4 4.4 The balance of \$13,400 (calculated as \$8,400 (under 4.2) plus \$5,000 (under
5 4.3)) is payable in full within 90 days of the effective date of this order.

6 DATED this 25th day of February 2013.

7 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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10 Lisa Marsh, Chair

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APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

Any party may ask the Executive Ethics Board to reconsider a Final Order. The request must be in writing and must include the specific grounds or reasons for the request. The request must be delivered to Board office within 20 days after the postmark date of this order.

The Board is deemed to have denied the request for reconsideration if, within 20 days from the date the request is filed, the Board does not either dispose of the petition or serve the parties with written notice specifying the date by which it will act on the petition. (RCW 34.05.470).

The Respondent is not required to ask the Board to reconsider the Final Order before seeking judicial review by a superior court. (RCW 34.05.470).

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A Final Order issued by the Executive Ethics Board is subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures are provided in RCW 34.05.510 - .598.

The petition for judicial review must be filed with the superior court and served on the Board and any other parties within 30 days of the date that the Board serves this Final Order on the parties. (RCW 34.05.542(2)). A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner’s attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;
- (4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

1 (5) Identification of persons who were parties in any adjudicative proceedings that
2 led to the agency action;

3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

4 (7) The petitioner's reasons for believing that relief should be granted; and

5 (8) A request for relief, specifying the type and extent of relief requested.

6 Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.
7

8 **ENFORCEMENT OF FINAL ORDERS**

9 If there is no timely request for reconsideration, this is the Final Order of the Board.

10 The Respondent is legally obligated to pay any penalty assessed.

11 The Board will seek to enforce a Final Order in superior court and recover legal costs
12 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
13 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
14 Board.
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