

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

No. 11-020

Withheld

STIPULATED FACTS,
CONCLUSIONS AND ORDER

Respondent.

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 September 9, 2011, the Executive Ethics Board (Board) received a complaint alleging that Withheld a Division Manager of The Military Department may have violated the Ethics in Public Service Act by possibly using state resources for personal gain.

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 42.52.48(1) (c).

1.4. Withheld recognizes that the evidence available to the Board staff is such that the Board may conclude he 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 his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-700-090(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** 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. **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 participation by any Board member at any subsequent hearing 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. Mr. **Withheld** was hired as the Chief Information Officer, for the Washington State Military Department in November of 2007, and during his tenure created the new Information Technology Division, Washington State Military Department.

2.2. During that time Mr. **Withheld** was an active member of the Washington State Air National Guard (ANG) assigned to the Western Air Defense Sector (WADS) as a Judge Advocate General (JAG) attorney located at McChord Air Force Base, currently known as Joint Base Lewis McChord (JBLM).

2.3. There is evidence to show that Mr. **Withheld** used a state vehicle to attend Rotary Club meetings and to attend CIO and ANG meetings at McChord Air Base during regular business days.

2.4. There is evidence to show that between December 2007 and November 2009, Mr. **Withheld** used his state owned computer to conduct some personal matters, Air National Guard documentation and pro-bono attorney activity. Documents found on Mr. **Withheld** computer to support this assertion are:

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KL
DBK
MB
JO
ABR

1. ANG orders
2. ANG payroll documents
3. ANG travel documents *PRO-BONO*
4. Information about a legal case not related to job of CIO
5. Information to show that he was involved in a pro-bono legal matter with the law firm - Luce and Associates that involved the YMCA
6. 90 e-mails sent/received from the Washington State Bar Association that were from or to the Legal Assistance to Military Personnel Section of the State Bar, or the Washington Leadership Institute (both activities were supported by his superiors)
7. 61 e-mails related to the ANG all of which dealt with issues relating to the military department

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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states: No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.4. Based on Findings of Fact 2.1 through 2.5, Dan Russ used state resources (computer, and vehicle) for personal benefit.

3.5. 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 Board reviewed the criteria in WAC 292-120-030. It is an aggravating factor that **Withheld** was a Chief Information Officer at all time pertinent to this case. The mitigating factors are that **Withheld**

Withheld

1. Conducted ANG work while working for the Military Department, with the knowledge, support, and the direction of his supervisor
2. Did not involve criminal conduct
3. Did not give Mr. **Withheld** any special privilege or result in financial gain
4. Did not intentionally commit the alleged violations
5. Did not attempt to conceal the violation
6. Cooperated fully in the investigation
7. Believed the conduct was approved by his supervisor

8. The conduct was not motivated by financial gain
9. The violation was unintentional

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, **Withheld** will pay a civil penalty in the amount of three thousand dollars (\$3,000.00).

5.2 The civil penalty of \$3,000.00 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. 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; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Withheld

Stipulated to and presented by:



Melanie deLeon Date May 9, 2012
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 May, 2012.

Matthew Williams, III
Matthew Williams, III, Chair

Lisa Marsh
Lisa Marsh, Vice-Chair

Linnæa Jablonski
Linnæa Jablonski, Member

Anna Dudek Ross
Anna Dudek Ross, Member

Michael Bahn
Michael Bahn, Member

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

Withheld _____ Respondent _____ Date _____