

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Sally Barber

Respondent.

No. 2012-04

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, SALLY BARBER, 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 10, 2012, the Executive Ethics Board (Board) received a complaint alleging that Sally Barber, Financial Service Specialist, Department of Social and Health Services, may have violated the Ethics in Public Service Act by 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. Sally Barber 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. Sally Barber 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. Sally Barber 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 Sally Barber 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. Sally Barber 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 Sally Barber 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 Sally Barber 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 Sally Barber 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, Sally Barber 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. Ms. Barber is a Budget Analyst, Economic Service Administration, DSHS and was working in that capacity for all times pertinent to this investigation.

2.2. On November 29, 2011, the SAO received a complaint alleging that Ms. Barber was using her state issued computer to conduct her personal outside business in real estate.

2.3. On March 2, 2011, the SAO obtained a mirror image of the hard drive from Ms. Barber's work computer. The SAO reviewed the contents of the hard drive and after finding enough evidence to support the allegation, they concluded their analysis to keep the cost down. Some examples of what was found is listed below:

- Educational sites (.edu) – 129 visits.
- Real Estate – 94 visits
- Banking – 30 visits
- Property – 25 visits

2.4. Ms. Barber's resume was located on the hard drive, which identifies her as earning a Bachelors of Arts degree from Ashford University. Most of the .edu sites were linked to Ashford University.

2.5. Most of the Real Estates sites were linked to zillow.com, a site that shows an estimated value of real estate, the surrounding properties, and a bird's eye view of the neighborhood the property is located in. There were also visits to the Thurston County Assessor's Office to obtain the assessed value of certain properties.

2.6. Some examples of other documents found that would support the allegation are listed below:

- A single family lease agreement.
- E-mails to a friend discussing the purchase of a Christmas Tree Farm and getting rental property at the beach ready for renters.
- Amortization Schedule.
- A home listing for sale.
- An excel spreadsheet showing revenue sources (the sale of puppies and plants), and a supporting email discussing the sale of puppies.
- An application to become a volunteer gardener with the WSU Thurston County Extension Master Gardeners Program.
- Triplex rules for cleaning.

2.7 Ms. Barber told SAO investigators that she owned and managed four rental properties, but that she would handle that business outside of work time.

2.8 As a result of the SAO investigation, Ms. Barber agreed to the following corrective action plan presented to her by DSHS.

- Ms. Barber will review DSHS administrative policy 15.15 – Use of electronic Messaging System and Internet.
- Ms. Barber will complete the information technology Security Awareness Online Training Course.
- Ms. Barber will review the Whistleblower program.
- Ms. Barber will review Administrative Policy 18.64 – Standards of Ethical Conduct for Employees.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Sally Barber 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 2.8, Sally Barber used state resources to conduct her outside business in real estate and the personal sale of plants and animals, in violation of RCW 42.52.160 and WAC 292-110-010.

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 a mitigating factor that Sally Barber received discipline from her agency regarding these violations. (See section 2.8) It is a mitigating factor that the edu. site visited by Ms. Barber, was for her business degree, which the state was reimbursing her tuition cost. Her supervisor advised her that, it would be all right for her to use state resources for this education.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Sally Barber will pay a civil penalty in the amount of, two thousand dollars (\$2,000.00). The Board agrees to suspend (\$1000.00) on the condition that Sally Barber complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$1,000 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, Sally Barber, 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.

Sally Barber 00/14/2012
SALLY BARBER Date
Respondent

Stipulated to and presented by:

Melanie deLeon 6/17/12
Melanie deLeon Date
Executive Director

