

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-011

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 30, 2012, the Executive Ethics Board (Board) received a complaint alleging that [REDACTED] a WorkSource Specialist, Employment Security Department (ESD) 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. [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 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. [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, this matter will be scheduled for an administrative hearing in front of the Board and [REDACTED] 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, [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] has been employed by ESD since 1989 and was a WorkSource Specialist for ESD.

2.2. In October 2011, ESD discovered that [REDACTED] was using his state issued cell phone for personal benefit.

2.3. ESD conducted its initial investigation by reviewing [REDACTED] Verizon phone bill for the period of June 2011 through October 2011. The cell phone statement showed more than 206 phone calls that [REDACTED] identified as being personal.

2.4. The September 2011, phone bill (August 22 through September 21) showed that [REDACTED] made 91 phone calls while he was on annual leave from August 22, 2011 to August 31, 2011. [REDACTED] was not authorized to work during his annual leave.

2.5. The August 2011 phone bill showed that [REDACTED] made 907 calls. Mr. [REDACTED] identified 83 of these calls to be work related. [REDACTED] identified 114 of the calls to be personal, and the other 710 phone calls were not identified by [REDACTED] as personal or work related. Many of these calls were during the time [REDACTED] was not working.

2.6. The July 2011 phone bill shows that [REDACTED] made 579 calls on his state-assigned cell phone. [REDACTED] identified 96 of these calls to be work related. Mr. [REDACTED] identified 92 of the calls to be personal and the other 391 calls were not identified as work or personal.

2.7. [REDACTED] told investigators that he could not remember calling or receiving calls from (509)439-3513. On the July bill alone, this number was called and /or received 29 times for a total amount of time of 89 minutes. Many of these calls were during the time Mr. [REDACTED] was not working.

2.8. The June 2011 phone bill showed that [REDACTED] made 308 calls on his state-assigned cell phone. [REDACTED] identified 90 of these calls to be work related. Mr. [REDACTED] could not identify the remaining 218 calls as work or personal.

2.9. A review of the Verizon bills showed that [REDACTED] made many calls on his days off, outside of his normal work schedule, while he was on sick leave and while his was on vacation.

2.10. [REDACTED] told ESD investigators that he received calls from clients after hours because they were not aware or did not understand his work schedule. [REDACTED] never received authorization to work outside of his 40-hour work schedule.

2.11. [REDACTED] told ESD investigators that he used his work cell phone because his personal cell phone was not working and he was dealing with some personal problems at the time.

2.12. [REDACTED] received a temporary reduction in pay for three months as a result of this violation. [REDACTED] pay was reduced from \$3,704.00, Range 44, Step L, to \$3,614.00, Range 44, Step K. Total amount of reduction was \$270.00.

### **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.

3.3. 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 2.11, [REDACTED] used state resources 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. Mitigating factors include [REDACTED] received a reduction in pay by for three months for a total amount of \$270.00.

**Section 5: AGREED ORDER**

5.1 [REDACTED] will pay a civil penalty in the amount of one thousand two hundred and fifty dollars (\$1,250.00). The Board agrees to suspend (\$250.00) on the condition that [REDACTED] 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, [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] 8/17/2012  
Date

Stipulated to and presented by:

Melanie deLeon 8/21/12  
Melanie deLeon Date  
Executive Director

