

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-37

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 August 7, 2012, the Executive Ethics Board (Board) received an agency referral from the Department of Social and Health Services – Special Commitment Center (SCC) – McNeil Island alleging that former Assistance Fire Chief [REDACTED] may have violated the Ethics in Public Service Act by using state resources for his personal gain and that he may have used his position to secure a special privilege. The Executive Ethics Board found reasonable cause on January 14, 2012.

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 his 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 is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.8. 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] was the Assistant Fire Chief for the Special Commitment Center (SCC) located on McNeil Island for all times pertinent to this investigation.

2.2. In 2010 the state Legislature decided to close the Department of Corrections (DOC) facility located on McNeil Island (MICC) by April 1, 2011. In January 2011, DOC began transferring inmates from MICC to other DOC facilities throughout the state.

2.3. By April 1, 2011, there were approximately 50 inmates remaining at MICC. Of those inmates, 30 were dedicated to working for DOC to support the cleanup and closure operations. The remaining 20 inmates were dedicated to work under contract for SCC to support marine and fire department operations.

2.4. The 20 inmates that the DSHS Special Commitment Center contracted for from DOC were not intended to perform unskilled DOC cleanup work. SCC specifically contracted with DOC for Class IV semi-skilled inmate labor. The inmates were to assist in the operation of the passenger ferries and tugboats between McNeil Island and Steilacoom, work in the marine boatyard overhauling vessels, and to provide inmate support to the McNeil Island Fire Department. As inmate firefighters, they would operate fire trucks, support medical emergency responses, suppress building fires, fight wildfires and assist with responses to hazardous material spills.

2.5. Former DOC employee residents of McNeil Island had been notified by DOC that whatever personal property they left on the island after April 1, 2011 would be considered abandoned, become property of the state and would be disposed of for its scrap or recycle value with any remuneration gained going back to DOC to offset the cost of the cleanup.

2.6. On June 2, 2011, DOC received an email from former DOC employee resident Nancy Armstrong relinquishing any and all of her personal property still located at her former house, located at 209 Buck Road, McNeil Island to DOC.

2.7. Sometime prior to June 6, 2011, ██████████ contacted Daniel Fitzpatrick, DOC Correctional Program Manager (CMP) to inquire about the abandoned trailer located at 209 Buck Road. ██████████ told Mr. Fitzpatrick that he would like to have the trailer frame, but not the structure. At that time, Mr. Fitzpatrick gave permission for ██████████ to take the frame stating that the owner, Nancy Armstrong, had sent him an email allowing DOC to dispose of it. ██████████ did not ask Mr. Fitzpatrick if he could use DOC inmates to dismantle the trailer nor did Mr. Fitzpatrick give ██████████ permission to do so.

2.8. On June 6, 2011, [REDACTED] instructed DOC inmate firefighters C.E, M.C., T.P., and R.M. to dismantle the travel trailer located at 209 Buck Road. These inmates were under contract from DOC to assist the McNeil Island Fire Station, not to assist in the clean up of the island. [REDACTED] informed the inmates that he intended to take the trailer frame to make a car trailer.

2.9. SCC Fire Chief Michael Sanders, the direct supervisor of [REDACTED] indicated that at the time of the alleged violations, he was unaware that [REDACTED] was using inmate firefighters to demolish the abandoned trailer.

2.10. Mr. Sanders told investigators that Mr. Fitzpatrick did contact him twice about the trailer and using inmates to cut it up as a training exercise. After some consideration, Mr. Sanders decided that it was more than they could do for training purposes and declined the offer.

2.11. On June 6, 2011, the four firefighter inmates removed the structure from the trailer frame. [REDACTED] directed the inmates to hook the bare trailer frame up to the McNeil Island Fire Department squad truck and transport the frame from the site at 209 Buck Road to the fire station.

2.12. Mark Blatman, DOC Construction Maintenance Supervisor, was assigned the job of decommissioning the island, which meant that he led the effort to remove much of the leftover materials as he could before DOC's departure from the island. Mr. Blatman was in charge of recycling and disposing of the DOC residential areas on the island.

2.13. Mr. Blatman's initial plan regarding the trailer at 209 Buck Road was to sell it to a scrap metal dealer. Scrap metal was selling for \$52 per ton.

2.14. On June 7, 2011, [REDACTED] arranged to have his personal vehicle, an F-150 Ford pickup truck, put on the SCC vehicle barge at Steilacoom by DSHS employee Brandon Weeks and transported to the island.

2.15. Mr. Weeks indicated that at the time of the request he thought that [REDACTED] had received the required approval to transport his personal vehicle to the island.

2.16. On the morning of June 8, 2012, [REDACTED] directed inmates C. E. and M. C. to go back to the site where they demolished the trailer and cut up the big pieces of metal and debris into a size that would fit into a dumpster.

2.17. The two inmates took the fire station squad truck to the trailer location. They had a discussion with [REDACTED] prior to leaving regarding what type of saw blades to use on the chop saw. [REDACTED] instructed them to take the used blades.

2.18. The two inmates met up with Mr. Blatman at the site sometime around 9:00 a.m. Inmates C.E. and M.C. started cutting up the larger pieces of debris. M.C. was using a state owned gas powered chain saw while C.E. was using a state owned gas powered circular saw with a large metal blade.

2.19. Later in the day of June 8, 2011, Chief Sanders observed the trailer frame attached to the personal vehicle of [REDACTED] while at the fire station. Chief Sanders did not give [REDACTED] permission to bring his personal vehicle onto the island or to take the trailer on the barge.

2.20. Assistant Fire Chief Joseph Rigney advised the Board investigator that his position as the Assistant Chief is a lead position and not a supervisory one.

2.21. Mr. Rigney told investigators that he did have a conversation with [REDACTED] concerning the trailer, but at no time did he ever give [REDACTED] permission to remove the trailer

using inmates. [REDACTED] told him that he was going to see if he could come over on a day off with his sons and cut it up. Mr. Rigney stated that he never spoke to Chief Sanders about the conversation.

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 conducting activities incompatible with their public duty (Conflict of Interest). RCW 42.52.020 states:

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

3.4. Based on Findings of Fact 2.1 through 2.21, [REDACTED] conducted activities incompatible with his public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. RCW 42.52.070 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.

3.6. Based on Findings of Fact 2.15, 2.16 and 2.20 through 2.21, [REDACTED] secured special privileges in violation of RCW42.52.070.

3.7. 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.

3.8. Based on Findings of Fact 2.1 through 2.22, [REDACTED] used state resources for his personal benefit.

3.9. 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. Aggravating factors are that [REDACTED] was in a supervisory position within the DSHS, SCC, McNeil Island Fire Department; these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that [REDACTED] is no longer employed by DSHS.

Section 5: AGREED ORDER

5.1 For the violations RCW's 42.52 mentioned above, [REDACTED] will pay a civil penalty in the amount of, nine thousand dollars (\$9,000.00).

at the rate of \$100.00 per month

5.2 The civil penalty of \$9,000 is payable ~~in full~~, to the State Executive Ethics Board

beginning 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]
Respondent

3/25/13

I do not agree with all of the Findings of fact, nor am I admitting any guilt, I'm accepting this settlement in the interest of concluding this matter expeditiously. MB

Stipulated to and presented by:

Melanie deLeon 4/20/13

Melanie deLeon
Executive Director

Date

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

✓

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 10th day of May, 2013

Lisa Marsh

Lisa Marsh, Chair

Absent

Anna Dudek Ross, Vice-Chair

M. Williams III

Matthew Williams, III, Member

Processed

Samantha Simmons, Member

* I, [redacted] accept do not accept (circle one) the proposed modification(s).

[redacted] _____
[redacted] ent Date 3/25/13