

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-41

STIPULATED FACTS,
CONCLUSIONS AND ORDER

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 14, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that Withheld former Washington State Military Department employee may have violated the Ethics in Public Service Act by using state resources to promote an outside business, ACN.

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 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. [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] [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 [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 Abigail Haddock 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. [Withheld] was employed by the Washington State Military Department (WMD) for all times pertinent to this investigation.

2.2. On March 25, 2009, a co-worker of Ms. [Withheld] reported to her supervisor, Mark Stewart, that Ms. [Withheld] was inappropriately using state resources to conduct personal business activities related to her outside employment.

2.3. As a result of the above mentioned complaint, Mr. Stewart conducted an investigation into the allegations. As part of Mr. Stewart's investigation he obtained information

from Ms. [Withheld] computer, e.g. e-mails and documents. Information Technology Specialist 4, Vicki Fraga on or about April 29, 2009, provided the information to Mr. Stewart.

2.4. The following is an example of some of the documents related to ACN, a wireless telecommunications company:

- November 26, 2008, 11:03 am, email from Ms. [Withheld] to Emergency Management Division (EMD) employee Deanna Cleman discussing ACN business.
- December 29, 2008, 11:08 am, email from Ms. [Withheld] to EMD employee John Vollmer providing information on ACN products.
- January 23, 2009, 12:03 pm, email from Ms. [Withheld] to a non EMD employee, Angie Montgomery, providing her with wireless phone product material.
- January 26, 2009, 10:56 am, email from Ms. [Withheld] to a non EMD employee, Celina McKinney, discussing a business opportunity.
- January 30, 2009, 9:08 am, email from Ms. [Withheld] to EMD employee, Dalton Gamboa, inviting him to a meeting to learn about a “very exciting” business opportunity.

2.5. On May 7, 2009, Mr. Stewart contacted EMD employee, Beverly O’Dea. Ms. O’Dea stated to Mr. Stewart that she had seen Ms. [Withheld] conducting private business activities at least a dozen times and that although she told Ms. [Withheld] to be careful in her use of the state computer to do her personal business, Ms. [Withheld] “just brushed her off.”

2.6. On May 22, 2009, Mr. Stewart contacted EMD employee, Deanna Cleman. Ms. Cleman stated that she saw private business materials, including newsletters and emails on Ms. [Withheld] computer screen on multiple occasions and that Ms. [Withheld] once forwarded a newsletter regarding ACN to her from her state computer. Ms. Cleman also stated that she noticed a variety of other internet sites on Ms. [Withheld] computer relating to buying and selling gold and gold coins. She, too, told Ms. [Withheld] to be careful in the use of her state computer, but she did not notice a decline in her misuse.

2.7. Ms. [Withheld] failed to complete and submit the required "outside employment authorization form" in accordance with the WMD Outside Employment Policy 16-00.

2.8. The Military Department terminated Ms. [Withheld] from state service.

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, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties.

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. 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.

3.5. Based on Findings of Fact 2.1 through 2.9, [Withheld] activities and use of state resources to conduct an outside business violated RCW 42.52.020 and .160, as well as WAC 292-110-010.

3.6. 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. A mitigating factor is that Ms. [Withheld] was terminated from state service as a result of this violation.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00).

5.2 The civil penalty of \$2,500.00 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 matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Withheld

18/21/12

Respondent

Stipulated to and presented by:

Melanie deLeon 10.25.12

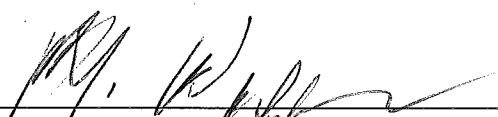
Melanie deLeon Date
Executive Director

II. ORDER

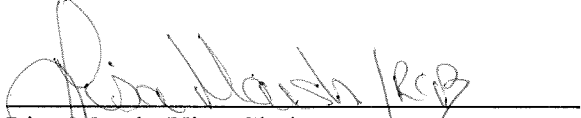
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

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 9th day of November 2012



Matthew Williams, III, Chair



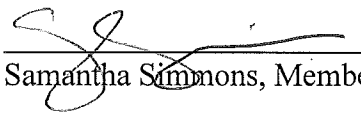
Lisa Marsh, Vice-Chair



Anna Dudek Ross, Member



Michael Bahn, Member



Samantha Simmons, Member

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

Withheld _____ Respondent _____ Date _____