

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-060

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 November 4, 2012, the Executive Ethics Board initiated a complaint alleging that Withheld an employee of the State of Washington, Department Corrections (DOC) may have violated state law when she used state resources to send/receive emails to the Spokane City Council in support of local private businesses.

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 42.52.480(1)(c).

1.4. [Withheld] 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. [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 292-100-090(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 [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. [Withheld] is a Classification Counselor employed by the DOC in Airway Heights, Washington.

2.2. [Withheld] is an active member of the West Central Neighborhood Council in Spokane Washington.

2.3. On April 3, 2012, [Withheld] used state resources send an email from work to members of the Spokane City Council and the West Central Neighborhood Council in support of local business owners. Ms. [Withheld] advised in this email to reply at her home email address or call her at her home phone.

2.4. On April 11, 2012, she received a reply from City Council Member Salvatori at her state email address. She replied using her state email account.

2.5. On April 11, 2012, Ms. [Withheld] received three emails from the Chair of the West Central Neighborhood Council regarding Ms. [Withheld] concerns with the local business owners. Ms. [Withheld] replied using her state email account.

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.

3.5. Based on Findings of Fact 2.1 through 2.5, [Withheld] used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.7. 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 [Withheld] believed that she could send an email in support of the local businesses on her lunch break and that she advised the recipient of the emails to respond to her personal email or phone.

Section 5: AGREED ORDER

5.1. [Withheld] agrees to take instruction in the requirements of RCW 42.52.160. Said instruction must be approved by Board staff and must be completed no later than February 13, 2013. In addition, [Withheld] agrees to pay a civil penalty in the amount of \$100 and refrain from violating RCW 42.52.160. [Withheld] agrees that if in the future, the Board finds

her in violation of these sections in a subsequent case, this Stipulation and Order may be taken into account in setting the amount of the penalty.

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

Respondent

Stipulated to and presented by:

Melanie deLeon 12-4-12
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 11th day of January, 2013.

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams III
Matthew Williams III, Member

Michael Bahn
Michael Bahn, Member

Samantha Simmons
Samantha Simmons, Member

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

Withheld _____ Respondent Date