

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-062

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 9, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that Withheld former Regional Manager, Employment Security Department (ESD) may have violated the Ethics in Public Service Act when he used state resources to conduct his outside business. The Board found reasonable cause on March 8, 2013.

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 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. [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. Mr. [Withheld] was hired by ESD as the WorkSource Spokane's Lean Consultant (Dickson Consulting Services) on October 2009 to June of 2010. He was appointed as the Regional Administrator for Spokane Region on July 1, 2010. Mr. [Withheld] was the Regional Administrator of WorkSource Spokane for all times prevenient to this investigation.

2.2. Mr. [Withheld] owns and operates a private business, Dickson Consulting Services, in which he is the only employee. Mr. [Withheld] indicated that since the time he was appointed as the Regional Administrator for the Spokane's WorkSource he has intentionally not had any private contracts nor has he sought out any outside contracts.

2.3. On July 1, 2010, Mr. [Withheld] submitted the "Notification of Outside Employment" form to work four hours per week at Dickson Consulting, providing lean and competency training at the two Spokane Community Colleges.

2.4. On July 6, 2010, Mr. [Withheld] submitted the "Notification of Outside Employment" form to work four hours per week as an instructor for the Dale Carnegie Leadership Training Courses. Dale Carnegie courses offer training in Human Relations, Lean Leadership, Executive Leadership, and Quality Management.

2.5. Mr. [Withheld] was involved in the Lean Management Consortium (LMC) prior to his employment with ESD in July 2010. Mr. [Withheld] is the Board Chairman for the Inland NW Lean Management Consortium and as its volunteer leader was not compensated for the position. LMC is a non-profit organization composed of local business and government leaders.

2.6. Between July 2010 and July 2012, Mr. [Withheld] sent/received over 50 emails regarding the LMC on his state computer. Per WAC 292-110-010, Use of State Resources, and Executive Order 11-04, Mr. [Withheld] believes that these e-mails were reasonably related to the conduct of official state duties for his organization's benefit, not his personal benefit.

2.7. Eu-wanda Jenkins is Mr. [Withheld] direct supervisor and reported directly to the ESD Commissioner, Mr. Trause. Ms. Jenkins indicated that she was not aware of Mr. [Withheld] use of state resources in support of the LMC nor did she ever approve the use of state resources to support the LMC. She did mention that Mr. [Withheld] has done good work for the state in regards to Lean Management.

2.8. Mr. [Withheld] received seven emails on his state computer from April 2011 to July 2012 associated with his outside employment at the Dale Carnegie Training. The emails were

cc'd or forwarded from his personal email account. He used his official title as his signature in all but one.

2.9. Mr. [Withheld] Outlook Calendar indicated that Dale Carnegie Course was scheduled to occur every Monday from May 2, 2011 until June 20, 2011, from 4:00 p.m. to 8:30 p.m. Mr. [Withheld] supervisor was aware of the training and allowed him to flex his time during the weeks he taught class to ensure that he worked a 40 hour work week.

2.10. Mr. [Withheld] left state service on March 1, 2013 to take a position as the COO for Spokane County.

### 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, 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 2.10, [Withheld] used state resources for his personal benefit.

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 an aggravating factor that, Mr. [Withheld] was the Regional Administrator of the Spokane WorkSource Center and that these types of violations significantly reduces the public respect and confidence in state government employees. It is a mitigating factor that the violations were unintentional, not knowing that the small amount of emails would constitute a violation, that Mr. [Withheld] was cooperative and helpful in the investigation, and Mr. [Withheld] no longer works for the State of Washington.

#### **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 dollars (\$2,000).

5.2 The civil penalty of \$2,000 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, 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

8/17/13  
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 9/4/13

Melanie deLeon                      Date  
Executive Director


**II. ORDER**

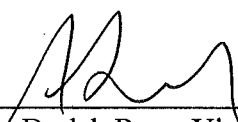
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is


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):

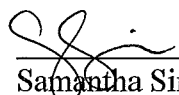
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DATED this 13th day of September, 2013


  
\_\_\_\_\_  
Lisa Marsh, Chair

  
\_\_\_\_\_  
Anna Dudek Ross, Vice-Chair

  
\_\_\_\_\_  
Matthew Williams, III, Member

  
\_\_\_\_\_  
Samantha Simmons, Member

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

 Respondent Date