

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 13-051

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 December 17, 2013, the Executive Ethics Board (Board) received a complaint against [REDACTED] Unit Supervisor for the Washington State Department of Social and Health Services (DSHS) alleging that she may have violated one or more sections of the Ethics in Public Service Act. The Board found Reasonable Cause on March 14, 2014 and requested that any monetary penalty maybe \$500 or less.

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] 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] was a unit supervisor for Children's Services in Region 5, DSHS, for all times pertinent to this investigation.

2.2. The complaint alleges that [REDACTED] used state resources to conduct her outside business, Juice Plus.

2.3. The SAO investigation resulted in the interview of sixteen of [REDACTED] co-workers and subordinates. Several of those interviewed stated that they had never heard of the product, others stated that she did talk about the product at work but, that it was always during

breaks or lunch and there was never any pressure to purchase, and one stated that they were not pressured to purchase but, that it was a very uncomfortable.

2.4. [REDACTED] told SAO investigators that she has never approached individual employees about Juice Plus, stating that it is all by word of mouth from talking during lunch and after work events. She does not take orders or deliver the product at work.

2.5. [REDACTED] has submitted and has received approval from her agency for outside employment to work for Juice Plus since September 2011. On those applications, she indicates that she started working for Juice Plus on August 1, 2009.

2.6. An examination of [REDACTED] state computer revealed evidence that she had used the email system in support of her outside business. On August 31, 2009, she sent/received four e-mails regarding obtaining new business cards for her Juice Plus business. On September 9, 2009, she sent/received two more e-mails regarding obtaining business cards for Juice Plus. On February 21, 2010, [REDACTED] forwarded an e-mail from her personal e-mail account to her work e-mail account related to Juice Plus.

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. A state officer or employee is prohibited under RCW 42.52.160 and WAC 292-110-010(5)(d) from using state resources for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private

business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee.

3.5. Based on Findings of Fact 2.1 through 2.6, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010(5)(b). The de minimis use rules under WAC 292-110-010(2)(d) do not apply to uses prohibited under WAC 292-110-010(5)(b).

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 [REDACTED] violations of the Ethics Act were unintentional and that the use of the state email system was over four years prior to this complaint.

Section 5: AGREED ORDER

[REDACTED] concedes that if the case went to a hearing, the Board could find that her use of state resources for a personal outside business violating RCW 42.25.160, WAC 292-110-010(5)(b). The parties agree that [REDACTED] will accept a letter of instruction from the Board as the appropriate and sole action taken by the Board. Included, as part of the letter of instruction is a requirement that [REDACTED] completes the On-Line Ethics Challenge with a score of 90 percent or higher. The parties further agree that no civil penalties, damages, costs or other monetary or non-monetary sanctions will be imposed or sought by the Board against [REDACTED] stemming from the complaint for case 2013-051.

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]

4-8-14

Respondent

Stipulated to and presented by:

Melanie deLeon 4/14/14

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 May 2014.

Lisa Marsh
Lisa Marsh, Chair

Absent
Anna Dudek Ross, Vice-Chair

M. Williams III
Matthew Williams III, Member

S. Simmons
Samantha Simmons, Member

Absent
Sumcer Singla, Member

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

[REDACTED] Respondent Date