

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

April Messenger
Respondent.

No. 2014-009

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, APRIL MESSENGER, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through EVELYN FIELDING LOPEZ, Acting 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 February 20, 2014, the Executive Ethics Board (Board) received a complaint alleging that April Messenger, Project Manager, Department of Early Learning (DEL) may have violated the Ethics in Public Service Act by using state resources when she used a state vehicle for her personal benefit.

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. April Messenger 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. April Messenger 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. April Messenger 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 April Messenger 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. April Messenger in turn agrees to release and discharge the Board, its officers, agents and employees from all April Messenger 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 April Messenger 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 April Messenger 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 April Messenger 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, April Messenger 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. Ms. Messenger has been employed as a Project Manager with the Department of Early Learning (DEL) since January of 2013 and was so employed for all times pertinent to this investigation.

2.2. Ms. Messenger used a state vehicle to attend a work related conference in Wenatchee Washington on October 14, 2013. The vehicle was obtained from the state motor pool located in Lacy Washington on October 11, 2013. Starting mileage on the vehicle at the time of pick up was 71,062. The vehicle was returned on October 21, 2013, with an ending mileage of 1113.

2.3. According to MapQuest, round trip mileage from Olympia to Elma (Official Residence) to Wenatchee is estimated at 477 miles. Subtracting 477 miles from the ending mileage of 1113 indicates that there are 636 miles that needed some explanation. The conference was located at the Red Lion Hotel, 1225 N. Wenatchee Ave.

2.4. Ms. Messenger told investigators that on Monday, October 14th, she drove her husband to Ardenvoir, Washington, so he could meet up with a friend to spend the day hunting. She returned later that same day to pick him up. She thought this was about ten miles out of Wenatchee. MapQuest estimates Ardenvoir to be 27 miles from the Red Lion Hotel in Wenatchee. A round trip would be 54 miles.

2.5. Ms. Messenger told investigators that she used her own funds to purchase fuel for the Prius on one occasion. She could not say how much fuel was purchased.

2.6. Ms. Messenger told investigators that one day after the conference she and her husband drove the Prius up to the Mission Ridge Ski Resort. Round trip is estimated at 29 miles.

2.7. Ms. Messenger stated that she drove the Prius to work on Friday, October 18th with the intention of returning it back to the Motor Pool. She was unable to arrange

transportation home and decided to drive it home and returned it on the following Monday. This round trip added another 50 miles to the odometer.

2.8. At the conclusion of the trip, Ms. Messenger was unable to account for 482 miles traveled.

2.9. Ms. Messenger did obtain permission to transport her husband in a state vehicle by her direct supervisor. By state procedure and DEL policy only the Head of an agency or a person designated can authorize the use of a state vehicle to transport a person for unofficial state business.

2.10. Dr. Bette Hyde, Director of DEL, told investigators that she did not authorize Ms. Messenger to transport her husband in a state vehicle and that she did not delegate that authority to anyone else in DEL. She went on to say, she has never had a conversation with Ms. Messenger regarding this matter.

2.11. Total cost to the state for the use of a state vehicle by Ms. Messenger was \$304.69. If Ms. Messenger had used her personal vehicle, she would have been entitled for reimbursement of the 421 miles round trip from her official residence at .56 per mile or \$235.76.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ms. Messenger 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 2.11, Ms. Messenger used state resources for her personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

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 2.1 through 2.11, Ms. Messenger secured a special privilege in violation of RCW 42.52.070.

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. Aggravating factors are that these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Ms. Messenger sought and was given permission from her supervisor prior to the act given her reason to believe that the use was allowable.

Section 5: AGREED ORDER

5.1 For the violating RCW 42.52.160, April Messenger will pay a civil penalty in the amount of, three thousand dollars (\$3,000.00). The Board agrees to suspend (\$1000.00) on the condition that April Messenger complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

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, April Messenger, 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.

April Messenger 7-14-14
April Messenger Date
Respondent

Stipulated to and presented by:

Evelyn Fielding Lopez 6/18/2014
Evelyn Fielding Lopez Date
Acting Executive Director

