

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Max Horn

Respondent.

No. 2014-022

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, MAX HORN, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On April 24, 2014, the Executive Ethics Board (Board) received a complaint referred by the Department of Social and Health Services (DSHS) alleging that Max Horn, a social worker, violated the Ethics in Public Service Act by using state resources for his personal benefit.

2. During all pertinent times to this investigation, Mr. Horn worked for DSHS as a Social Worker 3.

3. The complaint received by the Board was based on DSHS' preliminary internal investigation regarding allegations that Mr. Horn used state resources (internet/email) for his personal benefit in violation of DSHS Administrative Policy 15.15 – Use of Electronic Messaging Systems and the Internet (DSHS Administrative Policy). DSHS examined Mr. Horn's internet usage for a period of January 1, 2014 through April 22, 2014. The internal investigation revealed that Mr. Horn visited numerous non-work related internet sites in violation of the DSHS Administrative Policy.

4. DSHS' preliminary internal investigation also examined Mr. Horn's alleged inappropriate use of the state email system for his personal benefit and sending inappropriate emails to fellow co-workers affecting the moral and overall unit effectiveness.

5. Upon conclusion of the preliminary internal investigation, DSHS referred the case to the Executive Ethics Board on April 24, 2014.

6. The Board initiated an investigation on May 9, 2014. On June 23, 2014, Board staff received Mr. Horn's laptop computer from DSHS. An analysis of Mr. Horn's computer was completed using AccessData's Forensic Tool Kit (FTK 5.1) and Magnet Forensics Internet Evidence Finder (IEF 6.4). Board staff discovered the following::

#### Personal Emails

- John Harvey – Approximately 122 emails (7/1/12 through 6/4/13)
- Misc. Personal – Approximately 57 emails (2/9/13 through 4/25/14)
- Craigslist – Approximately 8 emails responding to Craigslist ads. (12/26/12 through 1/29/13)

#### Internet Use

- Ebay (some examples of use described below)

- 02/17/13: 1 hours and 31 minutes (peanuts snoopy items, evidence of online payment)
- 02/25/13: 2 hours and 12 minutes (Chainsaws, baby clothing, snoopy items, handbags, shoes)
- 02/26/13: 4 hours and 45 minutes (women's clothing, baby clothing/shoes, evidence of online payments X 2)
- 03/11/13: 16 minutes (women's clothing, jewelry, rings, toddler boots, evidence of on-line payment)
- 03/17/13: 1 hour and 55 minutes (toddler clothing, toddler shoes, evidence of on-line payment)
- 03/18/13: 2 hours and 24 minutes (clothing , shoes, toddler, North Face Jackets, Men's sweats , Women's clothing, evidence of on-line payment)
- 3/19/13: 37 minutes (Bergdorf clothing items, dresses)
- Other shopping sites visited (mostly during the same period as ebay visits.)
  - ESTY.com – online shopping and selling site for homemade and vintage items.
  - Amazon.com
  - northfacejackets.com
  - Piperlime.com
  - Shoebuy.com
  - Poshbaby.com
  - Grasshoperstore.com
  - Neimanmarcus.com
  - Gregslist.com
- Internet entertainment news site (3/19/13, 1 hour and 3 minutes)
  - usmagazine.com/celebrity
  - eonline.com
  - celebuzz.com
  - foxnews/entertainment
  - juicymagonline.com
- Vacation/Recreation/Food /Entertainment sites (2/9/13, 8 hours and 54 minutes)
  - Ticket Master – Portland Folk Festival tickets
  - Portland Folk Music live nation entertainment
  - Hotels.com
  - Yahoo search Hood River Lodging
  - Bestwesternoregon.com (Hood River Or.)
  - Portland.Craigslist.Org (Vacation rentals)
  - Aldercreekcabin.com
  - Vrbo.com (Vacation rental site)
  - Hood River Suites.com
  - hrvactions.com
- Downloads
  - iTunes64setup.exe (12/16/12)
  - iTunes64setup.exe (12/17/12)

7. Upon examination of Mr. Horn's computer, a folder was located containing 254 photos from a personal trip to Disneyland in December of 2008 that were uploaded to his DSHS computer on August 15, 2013. Board staff also located one personal AVI file (movie) uploaded on February 29, 2012.

8. Mr. Horn stated that it was not uncommon for him to work late and on some weekends when overtime was authorized. He further stated that he never removed his state issued laptop from work.

## **B. CONCLUSIONS OF LAW**

1. 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.

2. Based on the stipulated facts above, Mr. Horn used state resources for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

3. 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.

### **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that the violation was continuing in nature and tended to significantly reduce public respect for or confidence in state government.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mr. Horn and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. Max Horn agrees that if any or all of the alleged violations were proven 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).

5. Max Horn further agrees that the evidence available to the Board 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.

6. Max Horn 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Max Horn from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. Max Horn 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Max Horn and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Max Horn does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Max Horn waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Max Horn understands and agrees

that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Max Horn agrees to pay a civil penalty in the amount of four thousand dollars (\$4,000). The Board agrees to suspend two thousand dollars (\$2,000.00) on the condition that Max Horn complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The non-suspended civil penalty of two thousand dollars (\$2,000.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

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**II. CERTIFICATION**

I, Max Horn, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my



