

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2014-028

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 RUTHANN BRYANT, 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 May 15, 2014, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that [REDACTED] Cost Estimating & Risk Analysis Manager, Department of Transportation (DOT) may have violated the Ethics in Public Service Act by using state internet access for his personal benefit. The Board initiated the complaint on July 11, 2014

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 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. [REDACTED] 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 [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] is employed as a Cost Estimating & Risk Analysis Manager for the Washington State Department of Transportation (WSDOT) and was so employed for all times pertinent to the

2.2. In May 2013, the State Auditor's Office (SAO) received an assertion that a Mr. [REDACTED] was using state time and resources to write, publish and promote a book. The SAO obtained a copy of [REDACTED] email folders and hard drive that was subsequently reviewed by the SAO computer forensic unit for evidence to support the assertion.

2.3. The SAO review of [REDACTED] Internet activity showed 24 days from November 6, 2012 through July 1, 2013, when the subject accessed websites related to his book. [REDACTED] accessed an online shopping website where his book was sold, including a website specifically intended for authors. In addition, [REDACTED] accessed two other websites, one where the electronic version of his book was located and another website where his book was being offered for sale. [REDACTED] told SAO investigators that he was checking on how well his book was doing and for the reviews

2.4. [REDACTED] also has an outside business, [REDACTED] Group, a Risk Management Consulting and Training Company, which he accessed via the Internet on one occasion and sent two e-mails inviting people to attend a meeting he was speaking at as a representative of his outside business.

2.5. The SAO reviewed [REDACTED] email folders and found that on June 28, 2011, the subject began including in his signature block a graphic of his book along with a direct link to the shopping website where the book could be purchased. This graphic and link remained in his signature block until June 2013, when he was directed to remove the link and refrain from referencing the book by his supervisor. The focus of the email review was from May 2012 through July 2013. During that time the SAO found 11 emails directly related to promoting his book. In some of the emails the subject asked people to read and review his book and in others he suggested the senders read his book.

2.6. [REDACTED] told the SAO investigators that he was proud of the book and thought it not only was an accomplishment for himself, but also for the Department. He said the emails he sent requesting reviews were to help establish credibility. He described situations where he would receive feedback from other professionals about his book, which would allow him to fine-

tune the model described in his book, which directly benefited the Department as it is using this model. [REDACTED] said that although he would receive and respond to emails during business hours, all of his work on the book was completed at home on his own time. He said he did not think he had done anything wrong by including the information about his book in his signature block. He said he just wanted to get the information out for everyone to use.

2.7. [REDACTED] did receive discipline from his agency in the form of a letter of reprimand.

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. 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 2.3 through 2.7, [REDACTED] 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. Aggravating factors are that [REDACTED] was in a management position within WSDOT at the time of the violations; these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Mr. [REDACTED] has already received a letter of reprimand from his agency, any violation was unintentional, and he corrected the violation as soon as it was brought to his attention.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of three thousand dollars (\$3,000.00). The Board agrees to suspend one thousand dollars (\$1,000.00) on the condition that [REDACTED] 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.

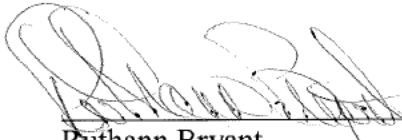
II. CERTIFICATION

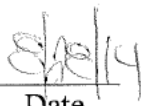
I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. 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]
[REDACTED]
Respondent

08/27/2014

Stipulated to and presented by:


Ruthann Bryant
Acting Executive Director


Date

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):

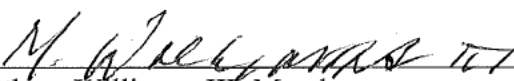
DATED this 12th day of September, 2014




Lisa Marsh, Chair



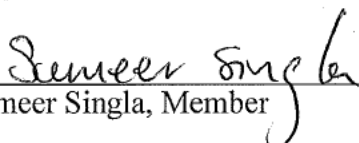
Anna Dudek Ross, Vice-Chair




Matthew Williams, III, Member




Samantha Simmons, Member



Sumeer Singla, Member

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

 Respondent Date