

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Zach Stephens

Respondent.

No. 2014-040

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ZACH STEPHENS, 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 July 11, 2014, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO) alleging that Zach Stevens (Mr. Stevens), Custodial Supervisor with Wenatchee Valley Community College (WVCC), may have violated the Ethics in Public Service Act when he left work during his assigned shift and did not submit the appropriate amount of leave.

2. Mr. Stevens has been employed at WVCC since 2007 and for all times pertinent to this investigation was a custodial supervisor. As a custodial supervisor, Mr. Stevens was responsible for eleven full-time employees and up to four part-time employees. His work schedule was 2:00 pm to 11:00 pm. He was not overtime exempt. Along with his supervisory responsibilities, Mr. Stevens was also responsible for performing occasional cleaning and event setup.

3. Mr. Stevens told SAO investigators that he would come in at 2:00 pm only one or two days a week. The other days he would come in early to set up for events or to talk with staff regarding upcoming events. He also stated that if he came in early he would send an email to his staff.

4. No time cards were available for the period of June 1, 2012 through December 31, 2012. The SAO investigation relied on emails sent to his employees over that period to determine hours worked. The SAO investigation identified 21 emails sent to Mr. Stevens' employees about 23 days indicating that he either would not be in or that he was leaving early. Fifteen of those emails indicated he would be leaving early. Of those 15 emails, the SAO found seven days where Mr. Stevens failed to submit leave or did not submit the proper amount of leave. Without time card data, it is hard to verify when Mr. Stevens clocked in and out, but by comparing his assigned work hours and the information in the emails, it appears that Mr. Stevens was paid upwards of 24 hours over the seven-month period where he did not submit the proper leave requests.

5. For the period of January through September 2013, the SAO was able to obtain complete time card in/out information, leave slips, and electronic time sheet data. As a result of

reviewing that information the SAO concluded that Mr. Stevens was paid for 64.3 hours of time when he did not work and did not submit proper leave slips. Mr. Stevens was over paid approximately \$1,187.

6. When Mr. Stevens was advised of the time discrepancies by SAO investigators he responded that he was not surprised that they would find something and that he didn't care. He further stated that he was responsible for his own schedule and if he worked late one day he might leave a little early the next. He indicated that no one really enforced his 2:00 pm to 10:00 pm schedule.

7. On January 6, 2014, Mr. Stevens took a voluntary demotion from a Custodian 4 supervisor position to Custodian 1.

8. On July 2, 2014, Mr. Stevens accepted a written reprimand by his agency and was required to pay back the 64.3 hours of time he took without submitting the proper leave. To pay back the hours, Mr. Stevens is forfeiting eight hours of leave each month until the total of 64.3 hours is paid back to the college.

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. WAC 292-110-010 Use of state resources states, in part:

.....

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, Mr. Stephens used state resources (time) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuous in nature. It is a mitigating factor that Mr. Stephens was required to pay back 64.3 hours of time and is no longer in a supervisory position.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Zach Stephens 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. Zach Stephens 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. Zach Stephens 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. Zach Stephens 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 Zach Stephens 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. Zach Stephens 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 Zach Stephens 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 Zach Stephens 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, Zach Stephens 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, Zach Stephens 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. Zach Stephens agrees to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) associated with the improper use of public resources, RCW 42.52.160.

The Board agrees to suspend five hundred dollars (\$500) on the condition that Zach Stephens 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.

12. The civil penalty in the amount of one thousand dollars (\$1000.00) 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.

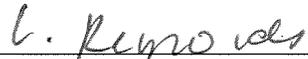
II. CERTIFICATION

I, Zach Stephens, 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 appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.


ZACH STEPHENS
Respondent

7/27/15
Date

Presented by:


KATE REYNOLDS
Executive Director

8/12/15
Date

III. 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

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ACCEPTED in its entirety;

REJECTED in its entirety;

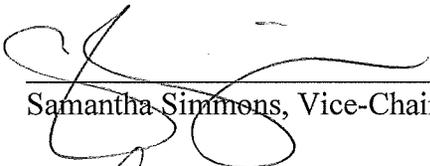
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

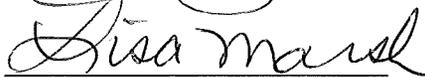
DATED this 11th day of September 2015



Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Sumeer Singla, Member

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

Zach Stephens, Respondent Date