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8 **STATE OF WASHINGTON**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**FOR THE EXECUTIVE ETHICS BOARD**

9 In the matter of:

OAH NO. 08-2015-AGO-0002

10 [REDACTED]

EEB NO. 2014-065

11 Respondent.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
FINAL ORDER

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13  
14 **I. PROCEDURAL HISTORY**

15 1.1 On September 4, 2014, the Executive Ethics Board (Board) staff received a  
16 complaint alleging that [REDACTED], a Classification Counselor with the Department of  
17 Corrections (DOC), violated the Ethics in Public Service Act, chapter 42.52 RCW, by using  
18 state resources (agency time, computer, and email) during work hours to work on her college  
19 coursework and manage her vacation rental from August 2011 to September 2014.

20 1.2 On March 13, 2015, the Board found reasonable cause to believe a violation of  
21 the Ethics in Public Service Act occurred.

22 1.3 A prehearing conference, with all parties participating, was held on  
23 September 14, 2015 with an Administrative Law Judge (ALJ) presiding pursuant to RCW  
24 42.52.500.

25 1.4 A status conference, with all parties participating, was held on December 22,  
26 2015 with an ALJ presiding.

1           1.5     After due and proper notice, a hearing was held before the Board. The hearing  
2 was held at the Board offices at Bristol Court in Olympia, Washington, convening on  
3 March 17, 2016. ALJ T.J. Martin from the Office of Administrative Hearings conducted the  
4 proceedings, and Board Chair Ross, and members Marsh and Ladenburg were present. Also  
5 present was Fronda Woods, Assistant Attorney General, legal advisor to the Board.

6           1.6     Board staff was represented by Chad C. Standifer, Assistant Attorney General.  
7 The Board's Executive Director Kate Reynolds and other Board staff members were present.

8           1.7     Respondent [REDACTED] was present and represented herself, *pro se*.

9           1.8     By written stipulation filed with the Board, the parties stipulated and agreed to  
10 the following Findings of Fact: 2.1 – 2.6. [REDACTED] testified that she had an opportunity to  
11 edit the stipulated facts. During the hearing, the Board received updated information regarding  
12 Finding of Fact 2.1, and identified and corrected a typographical error in Finding of Fact 2.4.

13           1.9     Board staff offered Exhibits 1-20. Exhibits 1-20, listed below, were admitted  
14 into evidence prior to hearing, as noted in the Order on Status Conference of December 22,  
15 2015, issued by ALJ Alice Haenle. The Board was provided copies of documents that were  
16 admitted as exhibits.

- 17           1.     Preliminary Investigation and Board Determination relating to  
18                Department of Corrections (DOC) employee [REDACTED] dated  
               March 13, 2015 (7 pages).
- 19           2.     Email from DOC employee Kristin Davis to David Killeen dated  
20                December 12, 2014 (2 pages).
- 21           3.     Email from DOC employee Leigh Henderson to David Killeen dated  
               December 12, 2014 (2 pages).
- 22           4.     Email from DOC employee Rebecca Owens to David Killeen dated  
23                December 11, 2014 (2 pages).
- 24           5.     Email from DOC employee Debra Palmer to David Killeen dated  
               December 10, 2014 (3 pages).
- 25           6.     Documents found on [REDACTED] DOC computer relating to her  
26                college coursework (177 pages).

- 1 7. Documents found on [REDACTED] DOC computer relating to her  
2 vacation property rental business (60 pages).
- 3 8. Emails found on [REDACTED] DOC computer relating to her college  
4 coursework (177 pages).
- 5 9. Emails found on [REDACTED] DOC computer relating to her  
6 vacation property rental business (48 pages).
- 7 10. Emails found on [REDACTED] DOC computer relating to her personal  
8 life (201 pages).
- 9 11. DOC Employee Separation Notice relating to [REDACTED] effective  
10 March 15, 2014 (1 page).
- 11 12. DOC workweek schedule relating to [REDACTED] dated March 16,  
12 2014 (1 page).
- 13 13. DOC appointment letter relating to [REDACTED] dated June 20, 2014 (1  
14 page).
- 15 14. DOC Employee Separation Notice relating to [REDACTED] effective  
16 July 15, 2014 (1 page).
- 17 15. DOC appointment letter relating to [REDACTED] dated July 17, 2014 (1  
18 page).
- 19 16. Email from DOC employee Darron Everitt to David Killeen dated  
20 December 15, 2014 (2 pages).
- 21 17. [REDACTED] resume (3 pages).
- 22 18. Executive Ethics Board complaint received September 4, 2014, from  
23 Gwenn Malham relating to [REDACTED] (4 pages).
- 24 19. Letter response from [REDACTED] to Reasonable Cause Determination  
25 dated April 29, 2015 (6 pages).
- 26 20. Property information for documents found on [REDACTED] DOC  
computer relating to her college coursework (24 pages).

1.10 [REDACTED] offered Exhibits A-C. Exhibits A-C, listed below, were admitted into evidence prior to hearing, as noted in the Order on Status Conference of December 22, 2015, issued by ALJ Alice Haenle. The Board was provided copies of documents that were admitted as exhibits.

- A. Witness List (1 page).

1 B. Emails found on [REDACTED] computer relating to school, work, and  
2 personal (29 pages).

3 C. Letter of recommendation from supervisor and performance evaluation.

4 1.11 The parties did not submit prehearing briefs.

5 1.12 The proceedings were recorded and open to the public.

6 1.13 The Board heard the testimony of David Killeen, Rebecca Owens, Debra  
7 Palmer, Kristin Davis, Gwen Malham, and Respondent [REDACTED].

8 1.14 The hearing was adjourned on March 17, 2016.

9 Based on the evidence presented, the Board enters the following Findings of Fact,  
10 Conclusions of Law, and Final Order:

11 **II. FINDINGS OF FACT**

12 2.1 [REDACTED] began working for the Department of Corrections (DOC) in  
13 July 2011. From January of 2013 through March of 2014, [REDACTED] worked as a  
14 Correctional Officer at Mission Creek Correctional Center for Women (MCCCW). During  
15 that time, she worked Saturday, Sunday, Monday, Tuesday, and Wednesday from 9:50 p.m. to  
16 6:20 a.m. In or around March of 2014, [REDACTED] transferred to the DOC Field Office in  
17 Bremerton as a Community Corrections Officer. She held that position until July 2014. During  
18 that time, she worked Monday through Friday, 8:00 a.m. to 5:00 p.m. In or around July of  
19 2014, [REDACTED] transferred back to MCCCW as a Classification Counselor, again working  
20 Monday through Friday, 8:00 a.m. to 5:00 p.m.

21 2.2 During the time she worked at DOC, [REDACTED] was working towards a  
22 master's degree from Brandman University in marriage and family therapy. She also operated  
23 a vacation property rental business.

24 2.3 [REDACTED] had access to multiple computers while working at MCCCW, but  
25 several of these computers had been replaced, reformatted, and surplus prior to the initiation  
26 of Board staff's investigation. The two available hard drives were obtained from DOC by

1 Board Staff and analyzed. The contents of [REDACTED] personal "H" drive, located on the  
 2 DOC network, was also obtained from DOC by Board staff and analyzed. [REDACTED] used  
 3 her "H" drive during throughout the relevant time period. With the exception of individuals in  
 4 the DOC's Information Technology department, no other DOC employee had access to  
 5 Ms. Hanson's "H" drive. Finally, [REDACTED]'s DOC email was also obtained and analyzed.

6 2.4 Approximately 30 documents related to [REDACTED] course work conducted at  
 7 Brandman University relating to the time period of April 21, 2013 through November 14, 2014  
 8 were located on one of the two available hard drives and/or [REDACTED] DOC "H" drive.  
 9 Board Ex. 6. [REDACTED] contends that while she used a state computer to work on these  
 10 documents, the time used was personal time and/or limited to her break or lunch times.  
 11 Examples of the documents located on the hard drives and/or [REDACTED] "H" drive are  
 12 listed below, along with the document properties for those documents as reviewed and  
 13 analyzed by Board Staff Investigator David Killeen:

Title	Document type	Last saved	Printed	Length (pages)	Time edited
Older Adult Interview Assignment	Word	4/21/13 at 1:42pm		7	
The Conflict of Religion and Homosexuality	Word	12/11/13 at 6pm	12/9/13 at 11:42pm	18	
[REDACTED] MS Exam	Word	2/2/14 at 5:54am		5	
Skinner	Word	2/3/14 at 12:10am		1	
Theorist Paper	Word	2/4/14 at 2:30am		4	
Behavior Plan	Word	2/4/14 at 6:02am		4	
Bowen Family Therapy	PowerPoint	4/3/14 at 4:15pm	4/3/14 at 5:24pm		1 hour, 10 minutes
Experimental Family Therapy	PowerPoint	4/14/14 at 4:56pm	4/14/14 at 4:56 pm		6 hours, 57 minutes (created 4/14/14 at 11:38 am)

1	Collaborative Theory	Word	4/16/14 at 4:56pm	8
2	Personal Counseling Philosophy	Word	6/23/14 at 4:00pm	10
3	Appendix A&B	Adobe PDF	8/1/14	3
4	CLR (Comprehensive Life Resources) Application	Application		7
5	Disaster and Trauma	PowerPoint	8/20/14 at 8:09am	8/20/14 at 2:57pm
6				6 hours, 48 minutes

7 Board Exhibits 6 and 20; Killeen testimony.

8 2.5 Approximately eight documents related to [REDACTED] vacation property  
9 rental business or of an otherwise personal nature were located on the examined hard drives  
10 and/or [REDACTED] personal "H" drive. Board Exhibit 7. These documents included three  
11 rental contracts, rental property cleaning instructions, a profit and loss report, loan  
12 modification documents for [REDACTED] husband as well as a credit report, and a quarterly  
13 report. *Id.* These documents were from approximately September of 2012 to September of  
14 2014. *Id.*

15 2.6 An analysis of [REDACTED] DOC email for the period of December 8, 2012  
16 through October 7, 2014, a 23 month time period, indicated that she sent/received  
17 approximately 424 emails related to her college coursework, her vacation rental property  
18 business, or that were personal in nature. Board Exhibits 8, 9 and 10. Of these 424 emails,  
19 approximately 153 emails related to her coursework including course assignment attachments,  
20 43 emails related to her business including three with rental contacts attached, and 228 were  
21 emails that were of an otherwise personal nature and not work related. *Id.* [REDACTED]  
22 contends that some of the 228 personal emails involved her DOC co-workers and may have  
23 been work related.

24 2.7 Sergeant Darron Everitt supervised [REDACTED] on Mondays and Tuesdays,  
25 from July 2013 to March 15, 2014. Shortly after becoming her supervisor, he talked with  
26

1 [REDACTED] regarding allegations that she was completing her college coursework during work  
2 hours. Sergeant Everitt told [REDACTED] she could only work on her coursework during her  
3 breaks and lunch. Sergeant Everitt was not aware that [REDACTED] was using state resources  
4 for personal use, including complete college coursework and conducting her outside rental  
5 business. At no time did Sergeant Everitt, or any other DOC supervisor, give [REDACTED]  
6 permission to complete college coursework or conduct her outside business using state  
7 resources. Board Exhibit 16; [REDACTED] testimony.

8 2.8 [REDACTED] received training on DOC policies concerning ethics and use of  
9 state resources. [REDACTED] testimony.

10 2.9 Debra Palmer is employed as a Custody Officer 2 for DOC at MCCCW.  
11 Ms. Palmer worked with [REDACTED] from January 2013 through March 15, 2014, two nights  
12 per week, Mondays and Tuesdays, from 9:50 p.m. to 6:20 a.m. Ms. Palmer testified by  
13 telephone that [REDACTED] brought her schoolbooks to work and did not hide what she was  
14 working on. Ms. Palmer could see [REDACTED] sitting at a computer but did not actually see  
15 what was on the computer screen. She said there is some computer work required as part of  
16 the job, maybe a couple of hours per night, but that [REDACTED] spent most of the night at the  
17 computer. She saw [REDACTED] picking up documents from the printer but did not see what  
18 they were. She said [REDACTED]'s computer use affected other employees' jobs, and they  
19 would cover for her clearing the kitchen, moving laundry, and moving equipment and other  
20 property. Ms. Palmer testified that [REDACTED] set break time was 2:30 a.m. to 3:00 a.m. and  
21 that [REDACTED] would take a nap from 2:20 a.m. to 3:10 a.m.

22 2.10 Rebecca Owens is employed as a Custody Officer 2 for DOC at MCCCW.  
23 Ms. Owens worked with [REDACTED] from approximately January 2013 through March 15,  
24 2014, two nights per week, Sunday and Monday, from 9:50 p.m. to 6:20 a.m. Ms. Owens  
25 testified that she observed [REDACTED] working on the computer and the time seemed  
26 excessive. Ms. Owens observed school books and observed Craigslist on the computer screen.

1 She said [REDACTED] use of computers affected Ms. Owens' job. Ms. Owens went to her  
2 supervisor and complained. After that [REDACTED] and Ms. Owens avoided each other and  
3 did not get along.

4 2.11 Kristin Davis is employed as a Custody Officer 2 for DOC at MCCCW.  
5 Ms. Davis worked with [REDACTED] from approximately February 2013 through March 15,  
6 2014, one night per week, 9:50 p.m. to 6:20 a.m. Ms. Davis testified by telephone that as a  
7 response movement officer, Ms. Davis might spend one to two hours per night on the computer  
8 and she observed [REDACTED] using the unit officer station computer. On about half the nights  
9 Ms. Davis worked with [REDACTED] she saw [REDACTED] doing computer work that was not  
10 work-related, and she saw books with [REDACTED] at the computer. Ms. Davis saw a  
11 university emblem on the screen. Ms. Davis never saw anything related to vacation property  
12 on [REDACTED] computer.

13 2.12 Gwen Malham is a former Classifications Counselor 3 for DOC. Ms. Malham  
14 worked with [REDACTED] at MCCCW from approximately July 16, 2013 through December 4,  
15 2014, Monday through Friday, 8:00 a.m. to 5:00 p.m. Ms. Malham testified that she trained  
16 [REDACTED] and shared an office with her. She said [REDACTED] spent little time in the office,  
17 and Ms. Malham complained to their supervisor. A couple of times, Ms. Malham observed  
18 non-work-related material on [REDACTED] computer screen, and she observed that  
19 [REDACTED] was typing quite a bit, more than was needed for the facilities plan. Ms. Malham  
20 also observed that [REDACTED] would bring books to work.

21 2.13 Respondent [REDACTED] testified that she believes she was a target on the  
22 graveyard shift. She testified, in partial contradiction to Stipulated Finding of Fact 7, that  
23 Sergeant Everitt did not tell her not to use a state computer, but told her not to bring her book  
24 bag because staff perceived that she was doing college work on state time. She testified that  
25 she did not spend more than one hour on state time doing personal work on state computers  
26 during the shift. She testified that she printed out documents at work only in emergencies



1 when she needed it right away and brought in her own paper to print an eighteen-page  
2 document. She admitted she used state resources but believes it was minimal.

3 2.14 The Board found that all Findings of Fact were proven by a preponderance of  
4 the evidence.

### 5 III. CONCLUSIONS OF LAW

6 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),  
7 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,  
8 with respect to employees in the executive branch of state government. The Board has  
9 jurisdiction over ██████████, whose actions occurred while she was a state employee. The  
10 complaint was filed in accordance with RCW 42.52.410, the Board found reasonable cause  
11 pursuant to RCW 42.52.420, and an adjudicative proceeding was conducted pursuant to  
12 RCW 42.52.430 and 42.52.500. All the required procedural notices have been provided.

13 3.2 The Ethics in Public Service Act governs the conduct of state officers and  
14 employees. Under RCW 42.52.430(5), a violation must be established by a preponderance of  
15 the evidence.

16 3.3 A state employee may not use state resources under her official control for her  
17 own private benefit or gain, or for the private benefit or gain of another, under  
18 RCW 42.52.160(1), which states:

19 No state officer or state employee may employ or use any person,  
20 money, or property under the officer's or employee's official control or  
21 direction, or in his or her official custody, for the private benefit or gain of the  
22 officer, employee, or another.

23 3.4 The Board's rule relating to use of state resources provides in  
24 WAC 292-110-010(2)<sup>1</sup> that:

25 <sup>1</sup> The Board amended WAC 292-110-010, effective April 1, 2016. The amended rule contains language  
26 that is almost, but not quite, identical to the quoted language.

- 1 (d) A state officer or employee may make an occasional but limited  
2 personal use of state resources only if each of the following conditions  
3 are met:  
4 (i) There is little or no cost to the state;  
5 (ii) Any use is brief;  
6 (iii) Any use occurs infrequently;  
7 (iv) The use does not interfere with the performance of any officer's or  
8 employee's official duties; and  
9 (v) The use does not compromise the security or integrity of state  
10 property, information, or software.

11 3.5 Based on the above stated Findings of Fact, the Board concludes that  
12 [REDACTED] committed violations of RCW 42.52.160(1) when she used state-issued  
13 computers, the internet, and work time for two purposes that involved her private benefit or  
14 gain—managing her rental property and doing her college coursework.

15 Documents and emails were found on DOC computers and [REDACTED] personal "H"  
16 drive that were not work-related. Exhibits 6 and 8 related to her college coursework  
17 (354 pages total). Exhibits 7 and 9 related to her rental property (108 pages total). The record  
18 includes approximately 38 documents and 428 emails created through a time period of  
19 approximately two years. Findings of Fact 2.4-2.6. This volume of documents and emails  
20 does not represent the brief or infrequent use contemplated by the rule that permits limited,  
21 brief, and infrequent personal use of state time and physical resources.

22 [REDACTED] worked on these documents during her work hours. For example, the  
23 documents described in the table included in Finding of Fact 2.4 were saved or printed during  
24 Ms. Hanson's scheduled working hours. Killeen testimony. Several of [REDACTED] co-  
25 workers also observed her working on things of a personal nature on state time, sometimes  
26 using a DOC computer. Palmer testimony; Owens testimony; Davis testimony; Malham  
testimony. [REDACTED] was consistently working on matters of a personal nature while she  
should have been carrying out her duties as a DOC employee. Even if some of [REDACTED]  
work on personal matters occurred during a break or lunch time, she was prohibited at all times

1 from using a DOC computer in furtherance of her personal activities. The Board concludes  
2 that her use of state resources interfered with the performance of her official duties.

3 [REDACTED] does not dispute that the documents and emails admitted into evidence  
4 were of a personal nature and not work-related. She admitted to using the computer up to an  
5 hour per shift and using the printer. [REDACTED] testimony. She argues her use was permitted  
6 under WAC 292-110-010 as being *de minimis* in nature. However, WAC 292-110-010(2)  
7 requires that a use of state resources be brief and infrequent and not interfere with the  
8 performance of one's official duties. In summary, based on evidence and testimony presented,  
9 the Board determined that [REDACTED] use of state resources was not of a *de minimis* nature.  
10 Her conduct violated RCW 42.52.160(1).

11 3.6 In determining the appropriate sanction, including the amount of civil penalty,  
12 for the use of state resources for managing rental property, the Board determined, under  
13 WAC 292-120-030(2)(a) and (b), that the violation was continuing in nature and was  
14 motivated by financial gain.

15 In determining the appropriate sanction, including the amount of civil penalty, for the  
16 use of state resources for doing college coursework, the Board determined, under  
17 WAC 292-120-030(2)(a), (d), and (f), that the violation was continuing in nature, impaired a  
18 function of the agency, and involved personal gain to [REDACTED].

19 3.7 In determining the appropriate sanction, including the amount of civil penalty,  
20 for the use of state resources for managing rental property and doing college coursework, the  
21 Board determined as an aggravating circumstance for both violations, under  
22 WAC 292-120-030(3)(a) and (f), that [REDACTED] intentionally committed the violation with  
23 knowledge that the conduct constituted a violation and incurred no other sanctions as a result  
24 of the violation.

25 3.8 In determining the appropriate sanction, including the amount of civil penalty,  
26 the Board considered the mitigating circumstances set forth under WAC 292-120-030(4), but

1 knowledge that the conduct constituted a violation and incurred no other sanctions as a result  
2 of the violation.

3 3.8 In determining the appropriate sanction, including the amount of civil penalty,  
4 the Board considered the mitigating circumstances set forth under WAC 292120030(4), but  
5 found none applicable. [REDACTED] did not have supervisory approval for her conduct. At  
6 least one of her supervisors, Sergeant Darron Everitt, put her on notice during the relevant time  
7 period that she was prohibited from using a DOC computer to work on things of a personal  
8 nature. Finding of Fact 2.7.

9 3.9 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000  
10 per violation or three times the economic value of anything received or sought in violation of  
11 the Ethics in Public Service Act, whichever is greater. The Board may also impose the costs of  
12 investigating the complaint and may order restitution for any damages sustained by the state.

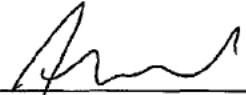
#### 13 IV. ORDER

14 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby  
15 ordered that [REDACTED] is assessed a total monetary civil penalty of \$3,000, payable in full  
16 within 90 days of the effective date of this order.

17 4.2 The amount was calculated as follows: a \$1,000 civil penalty for violations of  
18 RCW 42.52.160(1) related to managing her rental property plus a \$2,000 civil penalty for  
19 violations of RCW 42.52.160(1) related to doing her college coursework.

20 DATED this 29<sup>th</sup> day of April 2016.

21 WASHINGTON STATE EXECUTIVE ETHICS BOARD

22  
23   
24 \_\_\_\_\_  
25 Anna Dudek Ross, Chair  
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1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The  
4 request must be in writing and must include the specific grounds or reasons for the request.  
5 The request must be delivered to Board office within 10 days after the postmark date of this  
6 order.

7 The Board is deemed to have denied the request for reconsideration if, within 20 days  
8 from the date the request is filed, the Board does not either dispose of the petition or serve the  
9 parties with written notice specifying the date by which it will act on the petition.  
10 RCW 34.05.470.

11 The Respondent is not required to ask the Board to reconsider the Final Order before  
12 seeking judicial review by a superior court. RCW 34.05.470.

13 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

14 A Final Order issued by the Executive Ethics Board is subject to judicial review under  
15 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures  
16 are provided in RCW 34.05.510–34.05.598.

17 The petition for judicial review must be filed with the superior court and served on the  
18 Board and any other parties within 30 days of the date that the Board serves this Final Order  
19 on the parties. RCW 34.05.542(2). This Final Order was served on the date of mailing.  
20 RCW 34.05.542(4).

21 A petition for review must set forth:

- 22 (1) The name and mailing address of the petitioner;
- 23 (2) The name and mailing address of the petitioner’s attorney, if any;
- 24 (3) The name and mailing address of the agency whose action is at issue;
- 25 (4) Identification of the agency action at issue, together with a duplicate  
26 copy, summary, or brief description of the agency action;
- (5) Identification of persons who were parties in any adjudicative  
proceedings that led to the agency action;

- 1 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial  
review;
- 2 (7) The petitioner's reasons for believing that relief should be granted; and
- 3 (8) A request for relief, specifying the type and extent of relief requested.

4 RCW 34.05.546.

5 **ENFORCEMENT OF FINAL ORDERS**

6 If there is no timely request for reconsideration, this is the Final Order of the Board.  
7 The Respondent is legally obligated to pay any penalty assessed.

8 The Board will seek to enforce a Final Order in superior court and recover legal costs  
9 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been  
10 timely filed under chapter 34.05 RCW. This action will be taken without further order by the  
11 Board.