

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-071

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DAN HORVATH, 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 November 14, 2014, the Executive Ethics Board (Board) initiated a complaint referred by the Department of Natural Resources (DNR) alleging that ██████████ Dive Program Manager, may have violated the Ethics in Public Service Act by using state resources for his personal benefit.

2. Mr. ██████████ worked for the DNR as the Dive Program Manager and was in that position for all times pertinent to this investigation.

3. In early July of 2014, Mr. [REDACTED] was being investigated by DNR for an unrated incident involving the Dive Program. As a result of that investigation DNR internal investigators discovered that Mr. [REDACTED] and another DNR employee, [REDACTED] may have been engaging in the non-work related use of a state resource to send and receive many non-work related text messages and e-mails.

4. The DNR internal investigators obtained and reviewed the text messages sent/received from Mr. [REDACTED] work cell phone and Ms. [REDACTED] personal cell phone. In addition, the internal investigators reviewed emails on the state email system for both Mr. [REDACTED] and Ms. [REDACTED]

5. The cell phone records showed that Mr. [REDACTED] and Ms. [REDACTED] used text messaging for their personal benefit. The total amount of messages shared between them from April 14, 2014 through July 2, 2014, was 5552 messages. The monthly breakdown is shown in the chart below:

Time Frame	Text Messages
April 14, 2014 through May 10, 2014	2,791
May 12, 2014 through June 6, 2014	1,320
June 11, 2014 through July 2, 2014	1,441

In comparison, the exchanges of text messages between other DNR members in Mr. [REDACTED] chain of command for the same period are shown below:

	Messages
Todd Palzer – Immediate Supervisor	9
Blain Reeves – Second line Supervisor	21
Jason Kopplberger – Direct report	30
John Geist – Direct report	15

6. Some examples of daily use are shown below :

On Friday, April 18, 2014, Mr. [REDACTED] sent **118** text messages to [REDACTED] and she sent 118 text messages to him. The texts started at 9:12 am and continued throughout the day (with breaks between 10:25 am and 12:03 pm; 4:05 pm and 9:22 pm) until the last text at 9:33 pm.

On Wednesday, April 23, 2014, Mr. [REDACTED] sent **226** text messages to [REDACTED] and she sent **215** text messages to him. The texts started at 7:35 am and continued throughout the day (with a break between 11:16 am and 1:29 pm) until the last text at 6:37 pm.

On Friday, May 16, 2014, [REDACTED] sent **134** text messages to [REDACTED] and she sent **137** text messages to him. The texts started at 7:06 am and continued throughout the day (with a break between 9:31 am and 11:05 am) until the last text at 5:24 pm.

7. The majority of the text messages were sent during work hours. Both Mr. [REDACTED] and Ms. [REDACTED] admitted to the DNR investigators that the use of text messaging was excessive and that the majority of the text messages were not work related.

8. Several emails obtained by the DNR would support the allegation that Mr. [REDACTED] and Ms. [REDACTED] use of text messaging was personal and not work related. From an email exchange on June 30, 2014, Ms. [REDACTED] wrote, "*Holy crap! I am glad that I don't get a paper phone bill! It would be 1,000 pages long!*" Mr. [REDACTED] replied, "*LOL.... All texts to me? Now you know why my wife was freaking!*" In another email sent by Ms. [REDACTED] to Mr. [REDACTED] on June 21, 2014, read "*So, I hope they don't actually check your phone bill at work...holy cow we text a lot. :) Check out my 24 pages of just text. We need to download a text app so this isn't tracked like this anymore.*"

9. Ms. [REDACTED] told DNR investigators that she used to send text messages to Mr. [REDACTED] personal cell phone but Mr. [REDACTED] told her that his wife did not like it and he asked her to stop sending them to his personal phone. It was about that time that she started sending them to his work phone.

10. Ms. [REDACTED] told DNR investigators that some of the many text messages were work related but most of them were not. She stated that most of the text messages were just, "*joking around.*"

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, [REDACTED] 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 [REDACTED] was in a position of management within DNR and these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Mr. [REDACTED] is no longer working for the state.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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. [REDACTED] 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. [REDACTED] further agrees that the evidence available to the Board 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.

6. [REDACTED] 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] 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. [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.

8. If the Board accepts this stipulation, it 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. No other claims of alleged violations are pending against [REDACTED] at this time.

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 [REDACTED] 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, [REDACTED] 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, [REDACTED] 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. [REDACTED] agrees to pay a civil penalty in the amount of one thousand, seven hundred and fifty dollars (\$1,750) associated with the improper use of public resources, RCW 42.52.160.

12. The civil penalty of one thousand seven hundred and fifty dollars (\$1,750) 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, [REDACTED] 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.

[REDACTED]

8 JAN 15

Date

Respondent

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

1/20/15

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 13th day of March 2015

Lisa Marsh

Lisa Marsh, Chair

Anna Dudek Ross

Anna Dudek Ross, Vice-Chair

Samantha Simmons

Samantha Simmons, Member

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Sumeer Singla, Member

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

[redacted] Respondent Date