

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2015-024

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████ 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 March 11, 2015, the Executive Ethics Board (Board) received a complaint alleging that ██████████), Regional Director with the Department of Ecology (ECY), may have violated the Ethics in Public Service Act by providing a special privilege to Candidate #1, a friend. The complaint alleges that ██████████ hired Candidate #1 over more qualified and better-suited candidates for the open position of Regional Business Administrator (RBA).

2. For all times pertinent to this investigation, ██████████ worked as the Regional Director (RD) for the Eastern Regional Office (ERO) of ECY.

3. The ERO RBA supports the mission of ECY by managing, planning, organizing, and directing the administrative, fiscal, and business systems of the regional office as a member of the Regional Management Team. The position manages and plans for the optimal usage of a 45,000 square foot facility and coordinates the business systems to ensure the facility is open and operational to allow ECY staff to accomplish their work and to provide access to the public conducting business with ECY.

4. On December 9, 2014, ECY Deputy Director Polly Zehm authorized hiring the ERO RBA full time position. On December 18, 2014, the job bulletin was posted by ECY Human Resources (HR).

5. The job bulletin describes the duties of the RBA as a supervisor of five staff members supporting the region's fleet vehicles, central records, public disclosure, environmental complaints, and ensuring that the State Environment Policy Act (SEPA) reviews are in place and available to staff during the core hours of the week. The RBA is in direct support of the RD; this position manages financial, equipment fleet, transportation, facilities, human resources, public disclosure, records management, environmental complaint hotline, and administrative support and operations of the regional office. The RBA also interprets and applies relevant laws, policies and procedures, regulations, and devises procedures.

6. The job bulletin identified the required qualifications as having a bachelor's degree and three years of supervisory experience, advanced knowledge of management principles relating in particular to facility management, planning communications, staff development, project management and budgeting, and advanced knowledge of public disclosure laws and procedures.

7. On December 30, 2014, [REDACTED] received notification from ECY HR that nearly 36 applications had been received and were awaiting Subject Matter Expert (SME) review. [REDACTED]

began the SME reviews and continued the review process through February 2, 2015, when he forwarded his list of recommended candidates meeting his SME review to ECY HR. Two of the names forwarded to ECY HR were [REDACTED] friends, Candidate #1 and Candidate #2 (wife of candidate#1).

8. [REDACTED] indicated in his response to Board staff that in his desire to find and select the best, most qualified person for the position and in an effort to honor ECY internal candidates, he intended to interview all internal candidates that met the minimum qualifications and also interview the same number of external candidates.

9. According to [REDACTED], each application, resume, and letter of intent was scored based on a score sheet developed by him to ensure that he was consistently screening the applications.

10. [REDACTED] indicated in his response to Board staff that he read every word of each application and that he used the SME templet to systemically and consistently consider each application. Upon completion of [REDACTED] review, ECY HR certified 20 applicants. Of those 20 applicants, there were three internal candidates and six external candidates that [REDACTED] considered top tier. Candidates #1 and #2 were included in the top six external candidates.

11. [REDACTED] subsequently decided to interview the three internal candidates and three external candidates. Candidates #1 and #2 were two of the three external candidates chosen.

12. Once the candidates were determined by [REDACTED], he assembled an interview panel of him and four ECY employees for a total of five panel members. According to [REDACTED], he then turned to the development of the interview template. [REDACTED] indicated in his response to Board staff that he relied significantly on the methods and materials used the last time he hired an ERO RBA in 2010.

13. The interview panel members were provided the six candidate's application materials, including the application, resume, and letter of intent. Excluded from the packet of information provided to the panel members was the SME scoresheet used by [REDACTED] to determine the qualifications of each applicant.

14. [REDACTED] informed the interview panel that their job was to assist in the interview process and assist him in picking the best candidate for the ERO RBA position but that the final decision was his to make.

15. On February 9 and 10, 2015, the six candidates were interviewed by the panel and Mr. [REDACTED]. At the conclusion of the interviews, the interview panel ranked each candidate individually.

16. Interview panelist # 4 indicated to Board staff that they got the feeling that [REDACTED] was not pushing Candidate#1 on them but that it was clear to them that Candidate#1 was his first choice. The panel (excluding [REDACTED]) believed that Candidate#1 was not their first or second choice. The panel informed [REDACTED] of their choice immediately after the interviews and followed up with an email from panel members a few days later.

17. On February 11, 2015, [REDACTED] was advised by the other panel members, by email, of their top pick. The other panel members concluded that one of the internal candidates was by far the "best fit" for the RBA position. Candidate#1 was at best, the panel's (excluding [REDACTED]) third choice.

18. Interview panelist #2 indicated in their response to Board staff that [REDACTED] advised the panel, after the interviews, that he was friends of both Candidate #1 and Candidate #2. He further indicated that Candidate #1 was his "ecclesiastical leader."

19. Interview panelist #2 indicated to Board staff that they felt that because two of Mr. [REDACTED] friends were selected out of all of the applicants, the selection process felt tainted in their

mind. Interview panelist #2 further indicated that they felt that other qualified applicants were denied an opportunity for an interview because of [REDACTED] friendship with Candidate #1 and Candidate #2.

20. Interview panelist #2 also indicated in their response to Board staff that [REDACTED] told the panel he had encouraged Candidate #1 and Candidate #2 to apply and the fact that they were both selected for interviews made the interview selection process used by [REDACTED] suspect.

21. Interview panelist #2 indicated to Board staff that in their opinion, [REDACTED] should have notified the panel of his personal friendship with Candidate #1 and Candidate #2 before the interviews and ideally [REDACTED] should have recused him from the process or at least had a diminished role in the interviews.

22. Interview panelist #3, indicated in their response to Board staff that [REDACTED] told the panel after the interviews and when the panel was discussing the candidates' skills that the Candidate #1 and Candidate #2 were his friends.

23. Interview panelist #3 indicated to Board staff that they did not feel the selection of candidates and the interview process was fair because they believe that [REDACTED] knew who he was going to hire prior to the interview process.

24. Interview panelist #3 also indicated to Board staff that Candidate #1 was not their first or second choice.

25. Interview panelist #4 indicated in their response to Board staff that after the interviews [REDACTED] told the panel that he was friends with Candidate #1 and Candidate #2. Panelist #4 believed that [REDACTED] told the panel that the Candidate #1 and Candidate #2 were friends from his church.

26. [REDACTED] indicated in his response to Board staff that he told the interview panel that he knew Candidate #1 and Candidate #2. He also stated that he never told the interview panel about his church nor did he mention anything about the Candidate's church and that neither Candidate #1 nor Candidate #2 have ever served in his church.

27. Interview panelist #4 indicated to Board staff that in the aftermath of the interviews and [REDACTED] decision they felt more uneasy with his decision, thinking that [REDACTED] had made his choice prior to the interview process.

28. Interview panelist #4 indicated in response to Board staff that [REDACTED] had told them that the Candidate #1 and Candidate #2 had worked for the same company and that it had shut down and they were both out of work. During the interview process it was very apparent to them that Candidate #2 should not have been selected to be interviewed for the position. [REDACTED] told them that he wanted to give her a chance. Interview panelist #4 stated, in retrospect, they wondered if someone more qualified lost a chance to be interviewed based on [REDACTED] decision to give a friend a break.

29. Interview panelist #5 indicated in response to Board staff that [REDACTED] told the panel after the interviews that both Candidate #1 and Candidate #2 were his friends and that they were a married couple.

30. Interview panelist #5 indicated in a response to Board staff that they found it odd that one third of the people interviewed were friends of his and they were a married couple. Interview panelist #5 further indicated that they found it odd that only [REDACTED] reviewed the applications to determine who would be selected for an interview.

31. Interview panelist #5 stated that they asked [REDACTED] why he didn't have someone else review the applications and he responded that he did not want anyone in the administration section

to see the resumes of their new supervisor. Yet two of the administration staff were on the interview panel and would see the resumes anyway.

32. Interview panelist #5 indicated to Board staff that they recalled wondering how some of the candidates made it to the interview process. When they raised that concern to [REDACTED] regarding Candidate #2, he responded that he personally knew her and that he knew she had the abilities based on her prior job experience. This information was not mentioned by Candidate #2 in the interview and was not included in her application packet.

33. Interview panelist #5 indicated in response to Board staff that in the job posting one of the required qualifications was to have an understanding of Public Records and Public Disclosure. Any understanding by Candidate #1 was not indicated in his application and he admitted in the interview that he did not have experience in that area, but that he did have experience with HIPAA.

34. [REDACTED] indicated to Board staff that after the interview he did not rank the candidates but that he had two candidates in mind, one internal candidate and Candidate #1.

35. [REDACTED] stated in his response to Board staff that although he had recently had a positive working experience with the internal candidate, he decided that he would follow-up with his top external candidate, Candidate #1. Indicating that he wanted to learn more about his management style and how he would work with people.

36. [REDACTED] indicated in his response to Board staff that he arranged to meet with Candidate #1 off-site. This was a practice he has used in the past out of respect for the internal candidates in the building that may or may not be scheduled for a follow-up meeting. He further indicated that during the meeting they talked about the job, Candidate #1 experience, and his approach/style for about an hour and a half.

37. Upon returning to the office, [REDACTED] started conducting reference checks using the reference checklist template provided by HR. [REDACTED] edited the template to fit the position and his conversation style. [REDACTED] was able to make contact with three of the four references. All were positive.

38. [REDACTED] indicated to Board staff that on February 12, 2015, after careful deliberation, he made the decision to offer the RBA position to Candidate #1. He contacted Candidate #1 by phone to offer him the job and he accepted. He then made contact with all of the other candidates to inform them of his decision.

39. On February 20, 2015, [REDACTED] sent an email to all ERO staff informing them of his decision to hire Candidate #1 and that he would be starting in early March 2015.

40. Candidate #1 first day of work was March 2, 2015. He separated from state service on May 6, 2015.

41. [REDACTED] indicated in his response that he did not set out to create this conflict of interest. I did not set out to secure special privileges for friends. Neither of his friends asked for any special treatment and neither tried to influence the process in any way to their advantage. That he became focused on the task of filling the vacant position and failed to stop and properly consider, and carry out, his responsibility to prevent conflicts of interests and privilege. For that, he is deeply sorry.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of



any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, [REDACTED] conducted activities incompatible with his public duty by participating in the hiring process of a close friend, in violation of RCW42.52.020.

3. Based on the stipulated facts above, [REDACTED] used his position as the Regional Director with the Department of Ecology to secure a special privilege for his friends Candidate #1 and Candidate #2, in violation of RCW 42.52.070.

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, [REDACTED] is in a position of Management within the Department of Ecology and these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that [REDACTED] did not intentionally create the conflict of interest nor did he seek to provide a special privilege to his friends.

### **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 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. [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).

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 two-thousand dollars (\$2,000) for the violations associated with RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) 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.

12. The civil penalty in the amount of one-thousand dollars (\$1,000) 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]

12/19/2016  
Date

Respondent

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

1/11/17  
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;

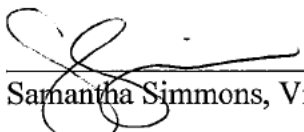
\_\_\_\_\_ REJECTED in its entirety;


\_\_\_\_\_ MODIFIED. This stipulation will become the order of the Board if the Respondent approves\* the following modification(s):

\_\_\_\_\_  
\_\_\_\_\_

DATED this 24<sup>th</sup> day of March, 2017

  
\_\_\_\_\_  
Anna Dudek Ross, Chair

  
\_\_\_\_\_  
Samantha Simmons, Vice-Chair

  
\_\_\_\_\_  
Lisa Marsh, Member

  
\_\_\_\_\_  
John Ladenburg, Sr., Member

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

[REDACTED], Respondent                      Date