

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Thomas Harmon
Respondent.

No. 2015-041

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, THOMAS HARMON, 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 May 25, 2015, the Executive Ethics Board (Board) received a complaint alleging that Thomas Harmon (Mr. Harmon), Classification Counselor with the Department of Corrections (DOC) at the Coyote Ridge Correctional Center (CRCC), may have violated the Ethics in Public Service Act by providing a special privilege to inmates by allowing them to use his office phone to make personal phone calls in violation of DOC policy. On June 18, 2015, pursuant to WAC 292-100-042, Board staff referred the complaint to DOC to investigate and make a recommendation as to the resolution. On July 8, 2016, Board staff received the completed DOC internal investigation.

2. Mr. Harmon has been employed as a Classification Counselor for DOC since August 1997. For all times pertinent to this investigation Mr. Harmon was a Classification Counselor 2 assigned to the Minimum Security Unit (MSU) at CRCC. Offenders housed within the MSU are to be released within four years of placement into the MSU.

3. Mr. Harmon transferred from CRCC to Airway Heights Correctional Center on April 16, 2015.

4. During the last three years of Mr. Harmon's employment at CRCC there were three investigations into providing services to offenders that were not permitted under DOC policy. Two of those investigation revealed that Mr. Harmon allowed offenders to use his office phone to make non-emergency personal phone calls. The three investigations are summarized below:

- DOC internal investigation opened October 10, 2012 regarding an allegation that Mr. Harmon had inappropriately changed the Earned Release Date for an offender. According to the final report issued on November 9, 2012, the allegation was substantiated. The investigation did not raise the issue of allowing offenders to use his office phone; however, it relates to performing a service for offenders not allowed by DOC. As a result of this investigation Mr. Harmon was demoted from a Classification Counselor 3 to a Classification Counselor 2.
- DOC internal investigation opened April 24, 2014 regarding allegations that Mr. Harmon provided a service (training certificate) to an offender not assigned to his caseload. Revealed as a part of this investigation was a letter of expectation dated September 11, 2013 from his supervisor, Melissa Warfield-Reyes, informing Mr. Harmon that he was not to allow offenders who were not on his caseload use of his office phone to make non-emergency calls to family/friends.

- The investigative file also includes a memo dated February 26, 2014 reminding Mr. Harmon not to provide non-emergent phone calls to offenders not on his caseload.
- Interviews were conducted with Mr. Harmon's co-workers in May of 2014. The interviews indicate that Mr. Harmon continued to provide services to offenders not on his caseload and that he was allowing offenders to make non-emergency phone calls from his office phone.
- This investigation resulted in Mr. Harmon receiving a "memo of expectations" on June 18, 2014, from the Superintendent of CRCC which states: "Common courtesy as a corrections professional dictates that a counselor does not allow offenders to counselor shop. Furthermore, to allow counselor shopping and assisting offenders not assigned to your caseload with non-emergent tasks has been addressed with you by your supervisor in the past. You are instructed to refer offenders back to their counselor if they come to you with non-emergent request..." (sic)
- DOC internal investigation opened January 5, 2015 alleged that Mr. Harmon participated in a football pool and used state resources in the process. The complaint was not substantiated and was closed on February 25, 2015. However, as part of the investigation, concerns were again raised that Mr. Harmon was allowing offenders to use his office phone to make personal calls

5. As a Classification Counselor, some of Mr. Harmon's work responsibilities include conducting intake of new offenders into the MSU, establishing Offender Release Plan (OPR),

Extended Family Visitation (EFV), arranging deathbed or funeral visits for offenders, and coordinating with families to ensure funds were transferred to pay for the visits. In addition, Mr. Harmon told DOC investigators that he saw offenders on a daily basis to talk about issues and that he had an open door policy.

6. Washington State prison facilities have restrictions on phone use by offenders in that they are to use the phone provided by the facility for most calls. There is a cost to offenders or to the party they are calling. When using the provided phones, offenders must use an IPIN (Inmate Personal Identification Number) to make these calls. Using phones other than the public phones provided by the facility relieves the offender of the cost associated with the phone call.

7. DOC policy permits the use of a non-IPIN SCAN telephone under compelling circumstances, such as family emergencies. These calls will be placed and supervised by employees.

8. Mr. Harmon was asked by the DOC investigator if his job responsibilities included making phone calls for offenders. Mr. Harmon indicated in his response that he receives a lot of incoming calls asking about offenders, some cases they were emergency calls or he would allow a courtesy call back to the family member by the offender or would make the call on behalf of the offender.

9. Mr. Harmon was asked by the DOC investigator what were allowable reasons for making a phone call for an offender. Mr. Harmon indicated in his response that those would be emergency calls or deathbed calls. He provided an example of an offender that had a mother in hospice care. He further stated that he would try to make entries into Offender Management Network Information (OMNI) to record the calls. Mr. Harmon indicated in his response that another reason he might call the offender's family was to start the release process (ORP) which started six months prior to the release date.

10. Mr. Harmon was asked by the DOC investigator if he has a process he would use to determine if he would make a call for an offender. Mr. Harmon indicated in his response that he had an open door policy with offenders so if an offender needed to make a call he would do so. Mr. Harmon felt that it was better to allow offenders to make phone calls, especially to relieve anxiety. He gave the example that an offender received news from his girlfriend that she was breaking up with him, if the offender needed to call her, he would allow the offender to make the call from his office. Mr. Harmon indicated that he would do this for safety purposes to prevent endangerment to officers from an upset offender.

11. Mr. Harmon was asked by the DOC investigator which offenders he would allow to use his office phone to make personal calls. Mr. Harmon indicated any offender regardless if they were on his caseload or not. Mr. Harmon was asked by the DOC investigator under what circumstance would he allow the offender to make a call from his office. He indicated a bona fide emergency.

12. Mr. Harmon was asked by the DOC investigator if there were limits or restrictions regarding the phone calls by offenders from his office. He indicated in his response that there were no limits to the number of calls but only to the length, which he limited to 2-3 minutes each call. Mr. Harmon further indicated in his response that calls could be for visiting, family emergencies, jobs and release calls for offender pick-up and re-entry.

13. Mr. Harmon was asked by the DOC investigator if there was a requirement to document the calls made for offenders in OMNI. He indicated in his response that OMNI entries would have been made for these calls and that they would have been made at the time of the call or within 24 hours.

14. Mr. Harmon was asked by the DOC investigator to provide examples of what he would consider an emergency. Mr. Harmon indicated in his response that death bed, death notification and

birth of a baby would be considered emergencies. He further indicated that he may also make calls to funeral homes, doctors, family member paying for emergency visits, and a hospital. He indicated that hospitals, funeral homes, and doctor offices would not accept calls from the offender's public phone system.

15. Mr. Harmon was asked by the DOC investigator if he had ever been instructed not make calls for offenders. Mr. Harmon stated, "Never."

16. An analysis of Mr. Harmon's office phone for the period of July 1 through December 31, 2014 revealed that 14 or more calls were made for ten offender's family members and/or girlfriends. Total number of calls made for/by these ten offenders during this period was 360. The total amount of time spent was approximately 1,627 minutes or 27 hours. The offenders would have saved approximately \$1,008 (The minimum contract rate of \$2.80 per call for the 360 calls).

17. Mr. Harmon indicated in his response to the DOC investigator that he believed he was performing his job by making calls for offenders and that all calls were made for a reason. He did not see it as a special privilege.

18. Mr. Harmon was advised by his supervisors on at least two separate occasions prior to this complaint that he should not allow offenders not on his caseload to use his office phone to make non-emergency phone calls.

19. Mr. Harmon resigned his position with DOC on April 13, 2016.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

2. Based on the stipulated facts, Mr. Harmon used his position to provide a special privilege to certain inmates in violations of DOC policy.

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.

4. Based on the stipulated facts above, Mr. Harmon used state resources; including time, for the private benefit and gain of other in violation of RCW 42.52.160

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.

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, Mr. Harmon had been given direction on more than one occasion not to provide the inmates excess to his office phone for non-emergency phone calls and these types of violations significantly reduce the public respect and confidence in state government employees. In the matter at hand, it is a mitigating factor that Mr. Harmon resigned from state service.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Thomas Harmon 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. Thomas Harmon 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. Thomas Harmon 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. Thomas Harmon 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 Thomas Harmon 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. Thomas

Harmon 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 Thomas Harmon 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 Thomas Harmon 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 Thomas Harmon 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, Thomas Harmon 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, Thomas Harmon 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. Thomas Harmon agrees to pay a civil penalty in the amount of one-thousand five-hundred dollars (\$1,500) for the violations associated with RCW 42.52.

12. The civil penalty in the amount of one-thousand five hundred dollars (\$1,500) 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, Thomas Harmon, 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.

Thomas Harmon 12-16-2016
THOMAS HARMON Date
Respondent

Presented by:

K. Reynolds 12/22/16
KATE REYNOLDS Date
Executive Director

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;

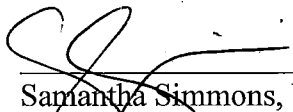
_____ REJECTED in its entirety;

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


DATED this 24th day of March, 2017



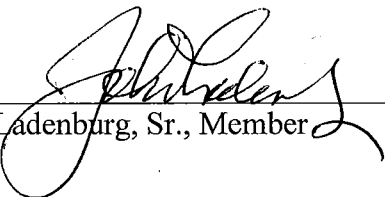
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member

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

Thomas Harmon, Respondent Date