

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2016-043

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], 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 17, 2016, the Executive Ethics Board (Board) received a complaint referred by the Department of Social Health Services (DSHS) alleging that [REDACTED]. [REDACTED] former Social Services Worker 3 (SSW) with Children's Administration (CA) may have violated the Ethics in Public Service Act when he had an inappropriate relationship with a client (identified as SA) on his assigned caseload. An investigation conducted by DSHS and the Washington State Patrol (WSP) determined the relationship took place between April 8, 2015 and April 19, 2015.

2. [REDACTED] was hired by DSHS/CA as a Social Service Worker (SSW) in 2007. He had been employed as a SSW since 2010. For all times pertinent to the investigation, he was

employed as such. [REDACTED] was terminated from employment with DSHS following the investigation.

3. On April 3, 2015, [REDACTED] was assigned an intake referral regarding an allegation of abuse to one of SA's children. The referral also included concerns about SA's behavior and stability due to her own possible medication issues. [REDACTED] visited SA's home on the morning of April 3, 2015 to assess the home situation and interview her.

4. Following the home visit, [REDACTED] entered notes into the case file at 5:04 pm that evening. In addition to notes related to the possible abuse situation, [REDACTED] noted that throughout the contact, "SA made comments about how sexy he is." He also indicated that SA had offered marijuana to him, which he declined; "[REDACTED] explained to SA that he cannot take gifts from clients and he left the residence."

5. Over approximately the next two weeks, [REDACTED] began an intimate relationship with SA, visited her home on at least two occasions, and engaged in sex with her, he also exchanged text messages with SA that were sexually graphic and included photographs of himself.

6. The personal relationship between [REDACTED] and SA was reported to DSHS on Sunday, April 12, 2015 by a friend of SA. Esther Shin-Kirkendall (Ms. Shin-Kirkendall) received an after-hours call at Central Intake from a person who identified herself as Lisa Lewis (Ms. Lewis). Ms. Lewis said she was a friend of SA and she had viewed sexually graphic text messages on SA's phone from her CPS caseworker. She identified the caseworker as [REDACTED]. She also reported that she observed photos of the caseworker and text messages on SA's phone about him coming over to have sex with her.

7. DSHS began an internal investigation. [REDACTED] was placed on alternate assignment on April 15th and reassigned to office duties in Olympia. The case was referred to WSP for investigation and possible criminal charges of [REDACTED] for Official Misconduct.

8. Additionally, [REDACTED] supervisor, Kat Scheibner (Ms. Scheibner), received a phone call from SA on the morning of April 16, 2015. SA told Ms. Scheibner she had been “having an affair” with her caseworker and identified him as [REDACTED]. She told her they had been “intimate with each other on more than one occasion.” She advised that [REDACTED] had sent her hundreds of text messages over the last couple of weeks. SA stated that yesterday, April 15th, he texted her and told her he was under investigation because of their relationship and had been reassigned to office duties in Olympia. He told SA she would most likely be getting a new caseworker assigned to her case. SA told Ms. Scheibner that [REDACTED] was now “harassing her to lie about it,” and threatening to have her kids taken away from her if she did not. She requested to meet with Ms. Scheibner to show her the text messages from [REDACTED]

9. Later that morning, Ms. Scheibner and Shawn Lewis (Ms. Lewis) met with SA. They contacted her in a McDonald’s parking lot, located next to their building. Ms. Scheibner viewed several text messages exchanged between [REDACTED] and SA. She recognized the phone number of the incoming texts as [REDACTED] personal cell phone. She noted there were hundreds of text messages from [REDACTED] most of them sexual in nature. She also saw texts from Mr. [REDACTED] stating that he wanted to leave work to have sex with her. She viewed a text from Mr. [REDACTED] to SA on April 13, 2015 indicating he could leave work to meet SA for sex because his “boss was not in the office.” Ms. Scheibner also observed on SA’s phone two pictures of Mr. [REDACTED] that he had sent.

10. Ms. Scheibner confirmed she was not in the office during the afternoon of April 13, 2015, having taken four hours of vacation leave from 1:00-5:00 pm.

11. Ms. Lewis also viewed the phone number associated with the text messages and confirmed it was [REDACTED] personal cell phone. She also observed the text messages were sexually graphic and noted that the photos [REDACTED] sent to SA showed him without a shirt on. She observed photos sent from SA to [REDACTED] where SA had exposed her breasts.

12. Later during the afternoon of April 16th, Ms. Scheibner and Kui Hug (Mr. Hug), Area Administrator for Region 3, went to SA's home at the request of WSP. SA gave them her cell phone to take to WSP for data collection. WSP was unable to download the phone data, due to damage to SA's phone, however the text messages were preserved by taking screen shots of them.

13. Board staff reviewed the screen shots and determined approximately 235 text messages were exchanged between SA and [REDACTED] between April 8, 2015 and April 19, 2015.

14. On April 20, 2015, WSP investigators interviewed SA. She confirmed [REDACTED] was assigned as her caseworker during the first week of April (she was unsure of the exact date). He made an initial home visit and they discussed the CPS referral and talked about available services. SA told investigators that as [REDACTED] was leaving, as a joke she offered some of her marijuana to him. He did not accept it. SA told investigators that [REDACTED] told her he had his own marijuana and that "everybody at CPS smokes weed." She also told investigators that she had asked [REDACTED] if he was married and he told her "yes but there are ways around that."

15. SA told investigators that [REDACTED] returned to her home a few days later with some paperwork. During this visit, they "flirted" with each other and eventually he was looking for his car keys and could not find them. SA said she was holding his keys and [REDACTED] asked her what he would have to do to get them back. SA said she told him he would have to kiss her to get them back and that led to them kissing. They also discussed plans for [REDACTED] to return to her home later that afternoon/evening with the understanding they were going to have sex. She told investigators she had arranged a babysitter for her children so they would be gone.

16. SA told investigators that [REDACTED] returned later that day and they smoked marijuana together and engaged in consensual sex. SA could not recall the specific time of day it was, only remembering it was after the lunch hour. Afterwards, [REDACTED] texted her frequently wanting to get together again.

17. SA told investigators [REDACTED] came to her home a few days later and they engaged in sexual intercourse a second time. They exchanged several texts prior to the encounter to make arrangements. SA said her children were home at the time but were napping.

18. SA told investigators that after their relationship was reported to DSHS and Mr. [REDACTED] was reassigned to other duties, he texted her numerous times, to coach her about what to say to investigators and pressure her to deny their relationship. SA told investigators [REDACTED] had told her that her kids could be taken away from her if their relationship was discovered.

19. During the course of the investigation, [REDACTED] was interviewed and admitted instructing SA to lie about their relationship. He denied that he threatened to have her children removed from her custody. [REDACTED] said he did not want the relationship to be discovered because he was fearful of losing his job.

20. Board staff reviewed text messages recovered from SA's phone, which indicate that most likely their first sexual encounter occurred on Wednesday, April 8th. At 9:46 am [REDACTED] texts: "Hey it's [REDACTED] from cps. I've got free time today if you do. This is my cell. Let me know. I can be free anytime today." (sic) They then exchanged 34 text messages of a sexual nature and made arrangements to meet later that day. SA also sent [REDACTED] several pictures with her breasts exposed. At 3:54 pm, she texts, asking him to come over at 6:00 pm. [REDACTED] texts back saying he can come now, or at 4:30 or 5:00 or 5:30.

21. On Thursday, April 9th at 4:02 am, [REDACTED] sends a text message to her asking her to let me know when you want me to come back. The sexual comments in the texts indicate

that they had met the day before and engaged in sexual intercourse. [REDACTED] also texts her that: "I can be there anytime this morning if you want." Six more text messages are exchanged throughout the morning.

22. Between April 10th and April 12th, [REDACTED] and SA exchanged 98 text messages. Many of the text messages are sexual in nature and indicate [REDACTED] is continuing the relationship.

23. Board staff reviewed twenty-three (23) text messages exchanged on Monday April 13th that likely indicate [REDACTED] and SA met in the afternoon and engaged in sexual activities.

24. Text messages exchanged between them on April 15th indicate that [REDACTED] has learned of the complaint/investigation into their relationship and has been reassigned to administrative duties. He sent several text messages to SA coaching her to deny the relationship. His texts also indicate his willingness to continue their relationship.

25. On April 16th, [REDACTED] exchanged forty-four (44) text messages with SA. Several are sexually explicit and indicate he was planning to meet her the following night however he was concerned about the investigation into their relationship. He sent several text messages throughout the morning and afternoon coaching her about what to say if she is questioned.

26. On April 17th, [REDACTED] sent nine (9) text messages to coordinate a meeting with SA. She does not respond because her phone is in WSP's custody.

27. [REDACTED] sent a final text message to SA on April 19th at 11:24 am: "missed you Friday night, also if anyone texts you from a different number saying it's me it's not true. I will only ever text you from this number." (sic)

28. On April 21, 2015, [REDACTED] was interviewed by WSP investigators. He initially denied having an inappropriate relationship with SA. He told them that during the initial visit to SA's home on April 3, 2015, she made comments to him about how sexy he was and was flirting

with him. She also offered him a "bud" of marijuana. [REDACTED] said he explained to her that he "could not accept gifts from her, much less drugs." He said SA then placed a marijuana bud in his jacket pocket, which he removed and put back into a container. [REDACTED] said she also asked him for his personal phone number and made the comment "your wife doesn't have to know if we do anything." [REDACTED] described her as "aggressive."

29. [REDACTED] said he went back to her residence a second time, a few days later to drop off paperwork regarding counseling services for the SA's child. He said he also explained to her that because there had been concerns about her medication issues and how they might impact her parenting, his role was to evaluate her stability and ensure she was taking her prescribed medications. He said he stayed approximately 15 minutes during this contact.

30. [REDACTED] eventually told investigators he had sent SA one text message from his personal cell phone to provide her with his office phone number in case she needed to contact him. [REDACTED] said he had sent the information on his personal phone because he did not know where his state issued cell phone was. He thought perhaps he had loaned it to a coworker and it was not returned to him.

31. When confronted with the text messages from SA's phone, [REDACTED] admitted he had engaged in sexual intercourse with SA on two occasions at her home. He admitted smoking marijuana with her on two occasions and sending her numerous text messages of a sexual nature. [REDACTED] also admitted he had deleted text messages and photos during the investigation to avoid having them discovered. [REDACTED] maintained throughout the investigation that he did not threaten SA with having her children removed from the home if their relationship was discovered.

32. [REDACTED] told investigators that although he did not know what the exact DSHS policy or procedure was regarding relationships with clients, he was sure it was not allowed and he knew he should not be engaging in this type of behavior.

33. On June 19, 2015, [REDACTED] was provided with a Notice of Intent to Discipline (NOI) by DSHS. A meeting was scheduled for June 29th to provide [REDACTED] an opportunity to respond. The NOI outlined several sections of DSHS Administrative policies believed to have been violated by his actions.

34. [REDACTED] attended the pre-disciplinary meeting on June 29, 2015 and provided a written response to the investigation. He admitted attempting to persuade SA not to cooperate or be truthful with investigators. Additionally, he admitted to smoking marijuana and having a sexual relationship with his client. He also admitted disobeying the directive not to have further contact with SA.

35. [REDACTED] indicated in his response that he did not view their sexual relationship as a conflict of interest because "all of my relationship activities were between consenting adults and were not done on work time." [REDACTED] stated that he was able to separate the relationship with SA, from the CPS investigation and he conducted the CPS investigation, as he would have in any other case. Since his relationship with SA was after hours and consensual, he never viewed his actions as being in the course of his official duties with DSHS.

36. During the pre-disciplinary meeting, [REDACTED] denied making any statements to SA that he had the authority to take her children away if she told about their relationship. He also denied the allegation made by SA that he made promises to assist her with getting employment through DSHS. [REDACTED] denied the allegation by SA that he influenced her to smoke marijuana. [REDACTED] said SA willingly smoked marijuana and he never brought or supplied it to her during his visits to her home.

37. Following the criminal investigation by WSP, the investigation was referred to the Mason County Prosecutors Office for consideration of Official Misconduct charges (9A.80.010). The case was declined for prosecution.

38. [REDACTED] was terminated from state service on July 6, 2015.

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, [REDACTED] actions involving his personal relationship with SA were incompatible with his official duties as the assigned social worker for her DSHS case in violation of RCW 42.52.020.

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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, they were continuing in nature, [REDACTED] was in a position of authority as the assigned caseworker. In the matter at hand, it is a mitigating factor that [REDACTED] was terminated from his state position and is no longer a state employee.

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.

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 five thousand dollars (\$5,000.00).

12. The civil penalty in the amount of five thousand dollars (\$5,000.00) 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.

E. 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.

Respondent

11/22/17

Date

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

11/29/17
Date

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 12th day of January 2018




John Ladenburg, Chair




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

[REDACTED], Respondent Date _____