

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

John Rogers

Respondent.

No. 2016-053

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, JOHN ROGERS, 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 July 25, 2016, the Executive Ethics Board (Board) initiated a complaint alleging that John Rogers (Mr. Rogers), Physician's Assistant with the Washington State Department of Corrections (DOC), may have violated the Ethics in Public Service Act by using state resources for his private benefit and gain by taking time off of work without submitting the proper leave request.

2. On June 16, 2016, a DOC opened an investigation into similar allegations of Mr. Roger's failure to submit leave slips for time he was taking off work. The DOC internal investigation was completed in August 2016.

3. Mr. Rogers has worked for the DOC for the past four years. At the time of the allegation, he was a Physician's Assistant at the Coyote Ridge Correctional Center. For all times

pertinent to this investigation, his work schedule was 7:00 am to 5:00 pm, Monday through Thursday. Mr. Rogers is an overtime-exempt employee.

4. Mr. Rogers told DOC investigators that he typically comes in to work, pulls his keys from Key Watcher, locks up his stuff, and goes into the facility to work. At the end of the day he returns his keys and leaves the facility. Mr. Rogers told DOC investigators that if he had a meeting or planned on working in an area of the facility where keys are not needed he may not pull keys on those occasions.

5. DOC's internal investigation team conducted a thorough and complete investigation consisting of reviewing Key Watcher data, staff accountability logs, DOC staff interviews, including Mr. Rogers, leave reports, training and travel documents, and emails indicating whether Mr. Rogers would be on some type of leave.

6. Mr. Rogers told DOC investigators that if the investigation determines that he failed to submit the proper leave he did not have a problem with submitting the proper leave for that time. He also indicated that any failure on his part to submit the proper leave was inadvertent and that he was not after anything he shouldn't have.

7. The DOC internal investigation determined that for the period of February 2015 through May 2016, Mr. Rogers took 210 hours off from work, was paid for that time, and the leave was not subtracted from his leave balance.

8. Mr. Rogers told Board staff that he acknowledges that he was paid for 210 hours of work that he did not perform.

9. In September 2016, Mr. Rogers agreed to submit 110 hours of leave for a value of \$5,956.98. This submission was accepted by DOC payroll on October 18, 2016.

10. On December 23, 2016, the DOC Payroll office advised DOC management that the additional 100 hours owed by Mr. Rogers had a value of \$4,855.62. On January 17, 2017, Mr. Rogers entered into a payment plan to repay the \$4,855.62.

11. Mr. Rogers no longer works for the State of Washington and he has repaid DOC for all time and money owed.

## 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. WAC 292-110-010 Use of state resources, prior to April 1, 2016, states, in part:

.....

**(2) The following are permitted uses:**

- (a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
- (b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
- (c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
- (d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:
  - (i) There is little or no cost to the state;
  - (ii) Any use is brief;
  - (iii) Any use occurs infrequently;
  - (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
  - (v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, Mr. Rogers used state resources (time) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

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 these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuing in nature. In the matter at hand, the mitigating factors are that Mr. Rogers repaid DOC for the time taken from work and that he no longer works for the State of Washington.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over John Rogers 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. John Rogers 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. John Rogers 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. John Rogers 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 John Rogers 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. John Rogers 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 John Rogers 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 John Rogers 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, John Rogers 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, John Rogers understands and agrees that this stipulation as well as information obtained during any settlement discussions between the

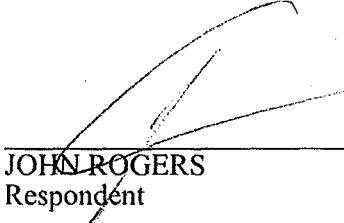
parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. John Rogers agrees to pay a civil penalty in the amount of two-thousand five-hundred dollars (\$2,500).


12. The civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) 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, John Rogers, 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.

  
\_\_\_\_\_  
JOHN ROGERS                      7/19/17  
Respondent                      Date

Presented by:

  
\_\_\_\_\_  
KATE REYNOLDS                      Date  
Executive Director

**III. 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

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ACCEPTED in its entirety;

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REJECTED in its entirety;

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MODIFIED. This stipulation will become the order of the Board if the

Respondent approves\* the following modification(s):

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

DATED this 8<sup>th</sup> day of September 2017

Anna Dudek Ross

Anna Dudek Ross, Chair

Samantha Simmons

Samantha Simmons, Vice-Chair

Lisa Marsh

Lisa Marsh, Member

Shirley Battan

Shirley Battan, Member

John Ladenburg

John Ladenburg, Member

\* I, John Rogers, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
John Rogers, Respondent

\_\_\_\_\_  
Date