

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████,

Respondent.

No. 2017-012

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 July 20, 2016, the Executive Ethics Board (Board) received a complaint alleging that Ronda Mann (Ms. Mann), Office Assistant at the Department of Corrections (DOC) Washington Correction Center (WCC), may have violated the Ethics in Public Service Act by taking time off from work without submitting the proper leave slips. As a result of Ms. Mann's investigation, evidence was brought forward that would indicate that ██████████), Ms. Mann's direct supervisor, may have also been taking time off from work without submitting the proper leave slips and that she was allowing Ms. Mann to take time off without requiring her to submit leave for her time off.

2. [REDACTED] is currently a Correctional Specialist 2 Grievance Coordinator and direct supervisor of Ms. Mann, Administrative Assistant 3, and was in that position for all times pertinent to this investigation.

3. WCC is a highly secure correctional institution. Entry into the WCC facility requires employees to checkout their assigned keys using the Key Watcher System and return those keys prior to leaving the WCC grounds.

4. On February 27, 2017, [REDACTED] indicated in a response to Board staff that her core work hours are from 6:15 am to 3:15 pm but she would flex her schedule and would usually start her workday at 5:00 am. This would indicate an eight-hour workday with an hour for lunch.

5. A 2014 Position Description document indicates that [REDACTED] is an overtime exempt employee with core working hours of Monday through Friday, 6:45 am to 3:15 pm; indicating a 30 minute lunch period.

6. Al Smack (Mr. Smack) told Board staff he believed that [REDACTED] flexes her work schedule to start at 5:00 am to end at 1:00 pm. He was not sure if she took a lunch break but indicated that if she did take a lunch break it would be for 30 minutes.

7. Mr. Smack indicated in a response to Board staff that it is expected that his employees take a lunch break but if they choose to flex that time, it was something that he did not track.

8. On May 1, 2017, [REDACTED] indicated in a response to Board staff that she does not take a lunch break and works a straight eight hour day.

9. [REDACTED] also stated in her response to Board staff that there is no time clock to track Ms. Mann's time. She would normally be in the office when Ms. Mann arrived and she would just note the time when she arrived.

10. [REDACTED] stated to Board staff that Ms. Mann does not always use the Key Watcher System since she would be in the office before Ms. Mann arrived and would provide Ms. Mann access to the office. [REDACTED] further stated that this happened often and that Ms. Mann would retrieve her keys later in the day or not at all. She added that she would do the same if Ms. Mann was in the office before her.

11. For the period reviewed there are 117 workdays. [REDACTED] took two holidays off (Memorial Day and 4th of July) and took 22 full days of leave. Of the remaining 93 days, Ms. [REDACTED] failed to submit leave for twelve full eight-hour workdays, leaving 80 days where she was at work. Of those 80 days, on average she left work early or arrived late for 2.6 hours per day.

12. For 47 of the 80 days, [REDACTED] and Ms. Mann left WCC within the same minute. Of those 47 days, Ms. Mann submitted leave on four days and on two of the four days [REDACTED] and Ms. Mann² submitted leave for the same time and amount. See below:

Date	Arrived	Departed	Leave Type	Time owed
(F) 3/25/16				
Mann	5:48 AM	10:04 AM	S/L (2 hrs) 10-12	1h:44m
[REDACTED]	5:35 AM	10:04 AM	none	3h:29m
(M) 5/16/16				
Mann	6:17 AM	10:50 AM	A/L (1hr)11-12	2h:27m
[REDACTED]	5:14 AM	10:50 AM	A/L (1hr)11-12	1h:54m
(M) 5/19/16				
Mann	7:46 AM	9:28 AM	S/L(3 hrs) 9:30-12:30	3hrs:18m
[REDACTED]	5:45 AM	9:28 AM	none	4hrs:17m
(Th) 6/9/16				
Mann	6:35 AM	10:21 AM	S/L (3 hrs) 10:15-1:15	1h:14 m
[REDACTED]	5:29 AM	10:21 AM	S/L (3 hrs) 10:15-1:15	0hrs:08m

¹ [REDACTED] Time owed based on a straight eight hour work day with no lunch break.

² Mann: Time owed based on an eight hour work day with a 30 minute lunch break for times over 5 hours worked. Less than five used eight hours.

13. On March 25, 2016, ██████████ sent Ms. Mann an email that said, "If you leave early today put in a slip, I put one in for two hours. Don't trust Barb." Ms. Mann replied, "ok." Both Ms. Mann and ██████████ departed the facility at 10:04 am and did not return. Ms. Mann submitted two hours of sick leave. Leaving one hour and 44 minutes of work time unaccounted for. Even though ██████████ indicated in the email to Ms. Mann that she submitted leave for two hours, Board staff found no evidence that she submitted a leave slip.

14. At 9:53 am, on May 16, 2016, ██████████ sent an email to Ms. Mann regarding a sick employee. At 10:05 am, Ms. Mann replied that they should leave because she did not want to get sick too. At 10:09 am, ██████████ replied that she was frustrated. At 10:09 am, Ms. Mann replied that she was too and that maybe they should go for a short walk. Key Watcher has them both returning their keys at 10:50 am and not returning for the day. Both submitted sick leave for one hour. One hour of sick leave did not cover the time taken off by ██████████ or Ms. Mann.

15. From the review of the Key Watcher System and sent emails, it appears for the period of February 18 through July 29, 2016, ██████████ received pay for at least 282 hours of time that she was not at work and did not submit the proper leave slips.

16. For the period of February 18 through July 29, 2016, Board staff was unable to find any information that would show that ██████████ was at work or that she submitted any form of leave for the entire day on twelve different occasions. See table below for the details:

Date	
Friday, February 26, 2016	DNR
Wednesday, April 20, 2016	DNR
Tuesday, May 3, 2016	DNR
Monday, May 9, 2016	DNR
Thursdays May 26, 2016	DNR, Mann on annual leave
Monday, June 20	DNR
Friday, June 24, 2016	DNR, Mann also DNR – no leave submitted
Tuesday, June 28, 2016	DNR

Tuesday, July 5, 2016	DNR, Mann also DNR – no leave submitted
Tuesday, July 12, 2016	DNR, Submitted 8 hours annual leave for July 11, 2016.
Friday, July 22, 2016	DNR, Mann also DNR – no leave submitted
Tuesday, July 26, 2016	DNR, Submitted 8 hours sick leave for July 25, 2016

17. There was no electronic or documentary evidence found to support [REDACTED] statement that she would make up time by coming to work earlier, staying late, or working on the weekends.

18. Co-worker #1 indicated in their response to Board staff that they believe Ms. Mann and [REDACTED] are gone a lot, mostly in the afternoon. Co-worker# 1 further indicated that they believed that both Ms. Mann and [REDACTED] came in to work around 5:00 am and that Ms. Mann and [REDACTED] has told them that they would come in on the weekends to make up the time.

19. Co-worker #1 indicated in their response to Board staff that they felt that Ms. Mann's absence from work was affecting their ability to do their job.

20. Ms. Mann stated in her response that she would sometimes arrive at the facility between 4:00 am and 5:30 am. The Key Watcher System data indicated that for the period of February 18 through to July 25, 2016, Ms. Mann never removed her keys from the Key Watcher System earlier than 4:49 am and only removed her keys 12 times before 5:30 am. On all twelve of the days she came in before 5:30 am, she left early and did not work eight hours for the day. There were no entries in the Key Watcher System that would show that Ms. Mann or [REDACTED] worked on the weekend.

21. Co-worker #2 indicated in a response to Board staff that they would often see Ms. Mann and [REDACTED] leaving together near lunchtime and they would not return.

22. Co-worker #2 indicated in their response that because of the close proximity to the workspace of Ms. Mann and [REDACTED] they are often asked if they know their whereabouts.

Ms. Mann and [REDACTED] have told them that they come in early and go home early. Co-worker #2 further indicated that they do not know when Ms. Mann and [REDACTED] arrive but that they would have to be coming in to work at 2:00 or 3:00 am to put in their required 8-hour day because they are leaving at about 11:00 am each day.

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 in violation of RCW42.52.020.

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. WAC 292-110-010 Use of state resources states, prior to April 2016, 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.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....
(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis 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 state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

5. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit for herself or others in violation of RCW 42.52.160 and WAC 292-110-010.

6. 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, the

violations were continuous in nature, and [REDACTED] was in a supervisory position within DOC and allowed her subordinate to abuse time.

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 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 six thousand dollars (\$6,000). 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 commits no further violations

of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The civil penalty in the amount of five thousand dollars (\$5,000) 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

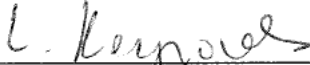
I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my 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]

8/4/17
Date

Respondent

Presented by:


KATE REYNOLDS
Executive Director

8/18/17
Date

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

✓

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):

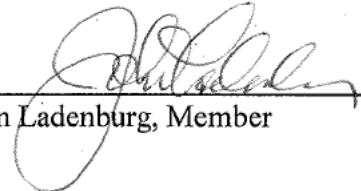
DATED this 8th day of September 2017


Anna Dudek Ross, Chair


Samantha Simmons, Vice-Chair


Lisa Marsh, Member


Shirley Battan, Member


John Ladenburg, Member

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

 , Respondent Date