

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Kopp

Respondent.

No. 2017-024

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER.

THIS STIPULATION is entered into by Respondent, DAVID KOPP, 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 June 16, 2017, the Executive Ethics Board (Board) initiated a complaint referred by the Washington State Patrol (WSP) alleging that David Kopp (Mr. Kopp), former Social Service Specialist with the Department of Social and Health Services (DSHS), may have violated the Ethics in Public Service Act. The complaint alleged Mr. Kopp conducted activities incompatible with his official duties in regard to a DSHS client, that he provided a special privilege to that client and that he used state resources for the private benefit of himself or others.

2. Mr. Kopp was first employed by DSHS in September 2008. On May 1, 2009, he began working as a Child Protective Service (CPS) Investigator as a Social Service Specialist 3 and was in that position for all times pertinent to this investigation.

3. On January 8, 2017, DSHS received a risk-only referral from Central Washington Hospital. The referral noted that a newborn was born premature at 34 weeks, weighing 4 pounds 5 ounces. The newborn was born drug exposed but not drug affected. The newborn's urine drug test at the time of delivery was positive for methamphetamines. Also at the time of delivery, the mother, AG, tested positive for cocaine and methamphetamines (meth). The referral also indicated that AG received sporadic prenatal care over the course of the pregnancy and that she tested positive for alcohol and meth in July 2016 and meth and cocaine in December 2016.

4. Mr. Kopp was assigned as the investigator for this case. Ayde Garza (Ms. Garza) was co-assigned the case. Ms. Garza was to work directly with AG in obtaining access to professional services provided by DSHS.

5. On January 11, 2017, DSHS filed a dependency petition to take the child into state custody. The dependency petition was based on the declaration of Mr. Kopp that AG was unfit to properly care for the child based on her history of drug use and the positive drug test performed by the hospital at the time of birth. Assistant Attorney General Mary White (AAG White) was assigned the case.

6. Custody of the child was given to AG's sister who lives in Kirkland, Washington.

7. On January 17, 2017, Mr. Kopp sent a letter via fax to the Central Washington Hospital Medical Records Section requesting copies of the umbilical cord drug detection panel and meconium drug screen results.

8. Detection of drugs in the umbilical cord tissue indicates maternal drug use during pregnancy. The pattern and frequency of drug use cannot be determined by this test. Detection of drugs in the umbilical cord tissue does not indicate impairment and may not affect the infant.

9. Meconium (infant feces) begins to form between the 12th and 16th week of gestation. Meconium drug testing can detect maternal drug use during the last four to five months of pregnancy.

10. Marina Vargas (Ms. Vargas), Medical Records Technician with Central Washington Hospital, indicated in a written response to WSP detectives that she mailed the results of both tests to Mr. Kopp at 130 S. Main, POB 3729, Omak, Washington 98841, on February 14, 2017.

11. Ms. Vargas indicated in her response to the WSP that Mr. Kopp called her a week later indicating he had not received the results of the test. Ms. Vargas indicated that she mailed out another copy of the test results to the same address as above on February 21, 2017.

12. Mr. Kopp told WSP detectives that on February 21, 2017, he made a visit to AG's home. The visit was in an official capacity as part of the investigation for this case. Mr. Kopp told WSP detectives that it was during that visit when things changed from strictly professional to personal. Mr. Kopp told WSP detectives that, "she leaned in on me and placed her hand on my thigh, that's when it all started." Mr. Kopp further stated that the personal relationship progressed in the next couple of weeks to "fully clothed cuddling."

13. On February 27, 2017, at 12:51 pm, Mr. Kopp sent a text message from his work cell phone to AG:

"I can't believe you'd rather be over there with [child's name] than here for court ;) Happy to hear your weekend went well. Been thinking a lot over the weekend. Hope to talk to you about it at some point. Btw, [child's name] umbilical cord was negative for drugs" (emphasis added)

14. On February 28, 2017, Mr. Kopp completed an Investigative Assessment (IA) indicating that the Meconium Screen/Cord Blood results were still pending.

15. Mr. Kopp told the WSP detectives that his investigative responsibilities ended on February 28, 2017, but because of the continuing court case, he was assigned to continue his professional involvement with the case.

16. Mr. Kopp told a WSP detective that at some time later he received a copy of the umbilical cord test that indicated there were no illegal drugs detected, a negative test result. He stated that he called the Medical Lab at Central Washington Hospital and spoke with a laboratory technician about the conflicting reports. He told WSP detectives that the laboratory technician told him that sometimes the initial urine test could show a "false positive" for drug use.

17. Mr. Kopp was unable to recall the name of the laboratory technician he talked with.

18. On or about March 22, 2017, Mr. Kopp had a meeting with his supervisor, Krisana Sharble (Ms. Sharble). In that meeting, Mr. Kopp told Ms. Sharble that the test results came back from the lab and they showed that AG's child was negative for meth and that the initial urine test could have been a false positive. Mr. Kopp then told Ms. Sharble that this was the whole basis for filing the dependency petition and that he could no longer argue for dependency based on the negative results.

19. Ms. Sharble indicated in a written statement to the WSP that she asked Mr. Kopp how that information was verified. She indicated that Mr. Kopp told her that he had contacted the lab tech who told him there was a false positive.

20. Ms. Sharble indicated in a written response to Board staff that Mr. Kopp told her in a face-to-face meeting that AG's drug test was negative for illicit drugs.

21. On March 27, 2017, at 1:00 pm, Rachele Lawson (Ms. Lawson), attorney for AG, sent an email to Mr. Kopp and Ms. Sharble. The email indicated that she had just received a call from AG and that she and her client were being told different information.

22. Later that same day at 6:00 pm, Ms. Lawson sent an email to Ms. Sharble, Mr. Kopp, Ms. Garza, and AAG White. Ms. Lawson wrote:

“So my question is, why does my client believe the department is dismissing the petition? I know there was the issue with the cordblood but is the department going to amend the petition?”

23. On March 28, 2017, at 1:33 pm, Ms. Sharble responded, *“I don’t know.”*

24. On March 28, 2017, at 1:38 pm, Ms. Garza wrote in response to Ms. Lawson’s email. *“Rachelle, I don’t know why [AG] is thinking that the Department will dismiss the petition...I definitely did not mention anything like that to her.”*

25. On March 28, 2017, at 5:54 pm, Ms. Sharble sent an email to AAG White, Paul Bjur (Mr. Bjur), Ms. Garza and Mr. Kopp informing them of DSHS’s decision to recommend dismissal of the dependency petition. The recommendation was because Mr. Kopp would not be able to testify to the facts in the petition showing a positive result of meth and cocaine at the time of birth based on new information contained in the umbilical cord test, a much more reliable test, which indicated a negative result for the presence of meth and cocaine.

26. On the evening of Monday, April 17, 2017, Mr. Kopp and AG left Omak to attend state training for Mr. Kopp starting Tuesday, April 18 and ending on Friday, April 21, 2017. AG accompanied Mr. Kopp on this trip, riding in a state vehicle and staying in his hotel room paid for by the state.

27. Mr. Kopp and AG departed Yakima on April 21st and drove to Kirkland, Washington to AG’s sisters house to visit with her child.

28. The drive to Kirkland was 185 miles longer than if Mr. Kopp would have driven straight back to Omak. Driving AG to her sister’s house in Kirkland to enable her to visit with her child was not a part of Mr. Kopp’s official duties.

29. Mr. Kopp and AG acknowledge that they were together on this trip and that Mr. Kopp drove AG to Kirkland at the conclusion of the conference in Yakima. They both acknowledge that they spent a couple of hours in Kirkland before driving back to Omak.

30. On May 6, 2017, DSHS moved forward with its recommendation to dismiss the case. The judge presiding over the hearing wanted to know the reason for the dismissal. Ms. Lawson spoke on behalf of AG and told the court that DSHS had received information from the umbilical cord test showing negative results for drugs. AAG White repeated the same sentiment. Based on this information, the case was dismissed.

31. Ms. Sharble indicated in her response to Board staff that the decision made by DSHS to dismiss the dependency petition was based on Mr. Kopp's declaration that AG had a negative drug screen. She further indicated that the decision to dismiss could have placed the child in an unsafe situation.

32. Mr. Bjur indicated in his response to Board staff that he was Ms. Garza's supervisor. Mr. Bjur also indicated in his response to Board staff that at one point in the investigation, Mr. Kopp told Ms. Sharble, Ms. Garza, and himself that the umbilical cord test results for the baby were negative and based on that new information, he could no longer support the dependency petition.

33. Mr. Bjur stated that he consulted with Ms. Garza to see if there was any other information that could be used to support the dependency petition. He indicated that Ms. Garza told him that she did not have any information that supported the dependency petition.

34. Mr. Bjur indicated in his response to Board staff that, fortunately, the child was placed with a relative of AG's choosing; otherwise, it could have been a situation with a lot of risk when the petition was dismissed.

35. On July 25, 2017, Mr. Kopp told WSP detectives that he had never seen the lab report indicating a positive result for meth and cocaine and that he did not know why he had not seen it. After viewing the reports, he acknowledged that they were positive and that if he had seen them he would not have advocated for the dependency case to be dismissed.

36. Mr. Kopp indicated in his response to Board staff that the report shown to him by the WSP detective was different from the one he recalled seeing, indicating that the report he saw was a one-line report, showing the results as negative. Mr. Kopp further indicated that the one line format was unusual and in retrospect, he should have contacted his supervisor to ensure that he was reading the report correctly.

37. Mr. Kopp was unable to produce the one-line report that showed a negative result nor was he able to provide an explanation as to where its location.

38. Mr. Kopp indicated in a response to Board staff that he admitted to WSP detectives that he probably neglected consulting his supervisor on the results because of his relationship with AG.

39. From February 22 to May 9, 2017, Mr. Kopp sent/received 986 personal text messages from his work cell phone to/from AG.

40. Mr. Kopp resigned from DSHS on June 18, 2017.

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. 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.

3. Based on the stipulated facts, Mr. Kopp had an interest in his personal relationship with AG in conflict with the proper discharge of his official duties in violation of RCW 42.52.020. Additionally, Mr. Kopp used his position to secure special privileges for AG. These activities are in violation of RCW 42.52.070

4. 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.

5. 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

6. Based on the stipulated facts above, Mr. Kopp used state resources for a personal benefit for himself and AG in violation of RCW 42.52.160 and WAC 292-110-010.

7. 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 and Mr. Kopp was in a position of authority over AG.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Kopp 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. David Kopp 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. David Kopp 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. David Kopp 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 David Kopp 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. David Kopp 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 David Kopp 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 David Kopp 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, David Kopp 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, David Kopp 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. David Kopp agrees to pay a civil penalty in the amount of eight-thousand dollars (\$8,000).

12. The civil penalty in the amount of eight-thousand dollars (\$8,000) 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, David Kopp, 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.



DAVID KOPP 10/18/17
Respondent Date

Presented by:



KATE REYNOLDS 10/20/17
Executive Director Date

