

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Karen O'Brien

Respondent.

No. 2018-061

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, KAREN O'BRIEN, 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 November 22, 2018, Board staff received a complaint from an individual alleging that Ms. O'Brien, a Registered Nurse working at the Washington Correctional Center (WCC), was using her state computer to browse the internet for her personal benefit and gain, stored hundreds of non-work related images on her state computer, and had downloaded copies of novels on to her work computer. The allegation did not indicate that Ms. O'Brien's personal use of state computer resources were related to any ethical violation regarding the health care of patients.
2. Ms. O'Brien has worked as a Registered Nurse for DOC since 2005. For the times pertinent to this investigation, Ms. O'Brien was a Registered Nurse 2 at the WCC located in Shelton.

3. Ms. O'Brien last completed a DOC Ethics course on July 14, 2014. On July 29, 2016, Ms. O'Brien signed an acknowledgment that she had received and read DOC Policy 280.100, Acceptable use of Technology, revision date of August 1, 2012. In this revision of DOC Policy 280.100, it indicated the following in regards to the use of the internet for personal reasons Section III (B) Internet: *The internet will be used for official business purposes. However, per WAC 292-110-010, the Washington State Executive Ethics Board has determined that accessing the internet for personal reasons on an employee's own time during non-working hours (e.g., breaks, before and after work) is acceptable.*¹

4. DOC Policy 280-100 – Acceptable use of Technology was revised on January 4, 2019. The above language has been removed and the policy now reflects the current guidance of WAC 292-110-010.

5. On July 18, 2016, DOC Captain Michael Green (Mr. Green) sent an email to all WCC staff regarding his knowledge of emails containing Excel games and requested that all employees remove them from their computer.

6. Ms. O'Brien indicated in her response to Board staff that the games were embedded in emails located in the deleted files in the email vault and that she could not access them to delete them. Ms. O'Brien also indicated in her response to Board staff that she contacted the IT department for assistance.

7. According to the complaint, during the time DOC IT was attempting to remove the embedded emails they discovered folders of non-work related images, many of the images were drawings or paintings of mermaids and were deemed not appropriate for the work place. Because of what IT found on Ms. O'Brien's computer, a request was made to the DOC IT Cyber Security Unit (CSU) to conduct a

¹ This language contradicts the actual guidance of WAC 292-110-010 at that time.

review of Ms. O'Brien's browsing history and to search for evidence of other personal use of the state computer system.

8. On October 31, 2016, CSU conducted a review of Ms. O'Brien's internet use for the period of September 26 through October 29, 2016. The review period contained 19 days of internet use browsing real estate sites for a total of 1 hour, 54 minutes of browsing. See the results below:

- Realtor.com
- Zillow.com
- Trulia.com
- Sothebyrealty.com
- Redfin.com

9. The CSU investigation identified over 1,000 images of real estate in Ms. O'Brien's browsing history as a result of her browsing real estate sites such as those shown above.

10. The CSU also conducted a search of files located on Ms. O'Brien's desktop and her "home folder" located on the DOC server for inappropriate photographs. The CSU investigator located 15 images of drawings and artwork that were deemed not appropriate for the workplace.

11. Board staff reviewed the contents of the following folders for non-work related items located on Ms. O'Brien's desktop computer:

Novels/stories

Title	Last modified	Producer	Author
Emperor Mage	10/3/16 @11:32 pm	Caliber-ebook.com	Tamora Pierce
Summoner Origins	5/18/16 @6:47 pm	Caliber-ebook.com	Taran Matharu
The Inquisition	8/13/16 @ 6:02 am	Caliber-ebook.com	Taran Matharu
The Novice	8/11/16 @ 11:04 pm	Caliber-ebook.com	Taran Matharu
The Realms of the Gods	10/17/16 @ 5:48 am	Caliber-ebook.com	Tamora Pierce
Wild Magic (.pdf)	8/27/16 @ 8:59 pm	Caliber-ebook.com	Tamora Pierce
Wild Magic (.docx)	10/31/16 @ 7:01 am		Tamora Pierce
Wolf-Speaker	9/17/16 @ 5:35 am	Caliber-ebook.com	Tamora Pierce

Documents

The Document folder contained 22 non-work related documents. See some examples below:

<u>Title</u>	<u>Type</u>	<u>Author</u>	<u>Created</u>	<u>Last Saved</u>	<u>Edit time</u>
FORECLOSURE	.docx	O'Brien	10/30/16 @ 11:33 pm	10/30/16 @ 11:37 pm	4 minutes
Go and take this the wrong way	.docx	O'Brien	8/11/15 @ 4:43 am	8/11/15 @ 4:48 am	5 minutes
How to Write a....	.docx	O'Brien	8/5/15 @ 12:26 am	8/5/15 @ 1:13 am	47 minutes
Kielbasa Stew	.docx	O'Brien	9/29/15 @ 3:06 am	10/3/15 @ 3:39 am	129 minutes
Knit Lattice	.docx	O'Brien	5/4/15 @ 1:31 am	5/4/15 @ 1:33 am	1 minute
Knit Mermaid Tail	.docx	O'Brien	4/6/15 @ 4:13 am	4/6/15 @ 4:16 am	3 minutes (printed)
LEASE AGREEMENT	.docx	O'Brien	5/7/16 @ 12:07 am	5/7/16 @ 4:15 am	247 minutes (printed)
To Whom it May Concern	.docx	O'Brien	6/17/14 @ 6:46 am	7/1/14 @ 3:06 am	376 minutes (printed)

12. Ms. O'Brien indicated in her response to Board staff that she believed WAC 292-110-010 allowed her to browse the internet during her breaks and 30-minute lunch.

13. Ms. O'Brien received a letter of reprimand for violation of DOC policies related to her use of state resources for her personal benefit and gain.

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. Based on the stipulated facts above, Ms. O'Brien used state resources for the personal benefit in violation of RCW 42.52.160.

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 an aggravating factor 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, Ms. O'Brien received a letter of reprimand for her personal use of state resources in violation of DOC Policy.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Karen O'Brien 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. Karen O'Brien 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. Karen O'Brien further agrees that the evidence available to the Board is such that the Board may conclude they 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. Karen O'Brien waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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 Karen O'Brien 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. Karen O'Brien 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 Karen O'Brien 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 Karen O'Brien 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 Karen O'Brien 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, Karen O'Brien waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval

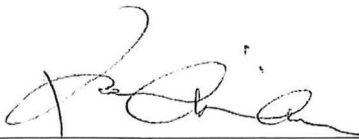
under WAC 292-100-090(2). Further, Karen O'Brien understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Karen O'Brien agrees to pay a civil penalty in the amount of two-thousand dollars (\$2,000) associated with violations of RCW 42.52. The Board agrees to suspend five-hundred dollars (\$500) on the condition that Ms. O'Brien complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

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.

I. CERTIFICATION

I, Karen O'Brien, 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.




KAREN O'BRIEN
Respondent

5/5/21

Date

Presented by:



KATE REYNOLDS
Executive Director

5/14/2021

Date

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

- X 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 14th day of May, 2021

approved via virtual meeting
Shirley Battan, Chair

absent
Gerri Davis, Vice-Chair

approved via virtual meeting
Jan Jutte, Member

approved via virtual meeting
Earl Key, Member

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

Karen O'Brien, Respondent Date