

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2018-010

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 April 22, 2017, the State Auditor's Office (SAO) received a whistleblower complaint alleging [REDACTED], Community Corrections Supervisor with the Washington State Department of Corrections (DOC), was conducting an outside business as a polygraph operator during state time and failing to submit leave.

2. On February 1, 2018, the Executive Ethics Board (Board) received an SAO referral alleging [REDACTED] may have violated the Ethics in Public Service Act by using state resources for private benefit or gain by failing to submit leave when he was absent from work.

3. [REDACTED] was originally hired by the DOC on March 6, 2000. He is currently assigned to the Parkland Field Office as a Community Corrections Supervisor (CCS).

4. On March 21, 2011, [REDACTED] submitted an Outside Employment/Volunteer Activity form that was effective on April 1, 2011, for his business, Raymond Polygraph Services. [REDACTED] stated on the form what polygraph services he provided and clearly stated that he has no DOC clients. [REDACTED] and the DOC confirmed that he does not have a contract with the DOC.

5. The SAO report stated that they reviewed [REDACTED] swipe-card entry logs, leave slips, calendar and emails from May 1, 2016 to June 30, 2017. The SAO attempted to obtain a copy of [REDACTED] hard drive; however, the contents of the drive were deleted shortly before their request.

6. According to the DOC Forensics Investigator, when he made contact with [REDACTED] to begin the process of replacing his laptop with a loaner on September 13, 2017, [REDACTED] advised him that his laptop was reimaged on September 1, 2017. The reason was listed as an effort to: *Migrate away from Symantec Endpoint Encryption and on to BitLocker. System reimaged, encrypted system with Bitlocker image and redeployed.*

7. The SAO investigation states that [REDACTED] works a 9/80 schedule. In a two-week period, [REDACTED] works eight 9-hour days, one 8-hour day, and then takes every other Friday as a day off.

8. [REDACTED] stated that he works an alternative schedule with every other Friday off. When he originally got the schedule approved, he assured his supervisor he would not miss meetings due to his regular day off and, if needed, would move it around to attend scheduled meetings or trainings. He said he has always done this to ensure his work is being accomplished.

9. [REDACTED] works on a project team that primarily meets at DOC Headquarters (HQ) in Tumwater. He has two supervisors; his direct supervisor is the DOC Community Corrections Division

(CCD) Assistant Secretary, Mac Pevey (Mr. Pevey), and his day-to-day supervisor is the Project Manager and Community Corrections Administrator at DOC, Autumn Witten (Ms. Witten). Mr. Pevey approves [REDACTED] leave requests and he told the SAO that he does not know [REDACTED] whereabouts on any given day and does not know his schedule. Ms. Witten told the SAO that she does not keep track of [REDACTED] whereabouts, and does not know his schedule.

10. The SAO report indicates there was no evidence to support that [REDACTED] absences were related to his outside business. The report also concluded that [REDACTED] did not submit leave for 80 hours of leave taken between May 29, 2017 and June 9, 2017.

11. Board staff requested and received [REDACTED] emails from May 1, 2015 to June 30, 2017 from DOC. There were 92 emails of personal nature. Of those, 28 were related to [REDACTED] outside business. In an interview with Board staff, [REDACTED] explained that his personal Gmail account and his DOC email accounts both start with [REDACTED]" and sometimes when he is attempting to forward an email from his business to his personal account, he accidentally sends it to his DOC account.

12. Regarding the emails from fellow business owners about meet-ups, [REDACTED] said he has asked those individuals to stop sending them to his work email. [REDACTED] advised Board staff that those emails are deleted when he finds them on his DOC account. There is no evidence that Mr. [REDACTED] ever responded to any of the emails other than to send them back to his business email account. Due to the content of the other personal emails, which include Washington State job applications, and the infrequency of the forwarded business emails, it does not appear that [REDACTED] was using state resources to conduct his outside business.

13. Board staff also noted multiple emails from DOC staff addressed to [REDACTED] DOC email address with various questions about polygraphs. Board staff contacted Dave Phillips (Mr. Phillips), Program Administrator for the Community Corrections Division, about those emails. In a

written response, Mr. Phillips stated that as part of his duties he manages the polygraph contracts and policy for DOC. His role is administrative as he is not a licensed polygraph examiner.

14. He said that prior to being informed by Board staff, he was not aware of DOC staff contacting [REDACTED] directly. He said staff are likely contacting [REDACTED] regarding polygraph questions because [REDACTED] is a licensed examiner, and has been with the DOC in a variety of capacities for a number of years and is well known by employees, especially in the Pierce County area. He told Board staff that he has also contacted [REDACTED] in the past with general questions about polygraphs. Mr. Phillips also stated that [REDACTED] was selected to double-fill his position while he was out on medical leave from February to mid-April 2017.

15. Board staff asked [REDACTED] why, according to his swipe card log, his arrival times at HQ were consistently at or after 9am. [REDACTED] advised Board staff that his permanent office is located in Seattle. He stated because of his commute his arrival times at HQ varied.

16. In February 2016, he was asked to work with a statewide team to review their processes and policies. The meetings are primarily at the DOC HQ office in Tumwater. Because staff was coming from around the state, the meetings were scheduled from 9am to 4pm in order to accommodate staff that were not from Olympia and had to commute to this location. [REDACTED] said that although they meet at HQ frequently, they also use other state offices to meet at and also work from home when completing certain reviews and preparing training materials

17. [REDACTED] said he lived in Puyallup and his commute to Tumwater could take from 1 hour to 1 hour 15 minutes in the morning and from 1.5 hours to 2 hours in the evenings, depending on traffic. [REDACTED] stated he believed that when commuting to HQ his commute was part of his scheduled workday based his understanding of this assignment.

18. In a written response from Mr. Pevey, he said that while on paper he was [REDACTED] supervisor, he did not supervise his daily activities while assigned to the project. He stated that Mr. [REDACTED]'s permanent assigned workstation is in Seattle and that [REDACTED] has been at HQ on a project since approximately February 2016. Mr. Pevey said to his knowledge, no one had a discussion with [REDACTED] about his commute time being work time. As such, given his assigned workstation was in Seattle, it would be reasonable to assume that although his commute was not included in his scheduled shift, he could have thought his commute time was work time.

19. Board staff reviewed 11 emails written by [REDACTED] during the time period of June 22, 2016 through May 15, 2017. In those emails, [REDACTED] stated he was going to take either sick leave or annual leave, but did not submit a leave slip.

20. [REDACTED] met with Board staff and explained how he made up the time mentioned in the 11 emails in question. He supported his explanation by using his Outlook calendar, emails and internet usage.

21. Also discussed was [REDACTED]'s failure to submit a leave slip for the 80 hours of leave taken May 29, 2017 through June 9, 2017. [REDACTED] confirmed he submitted a leave request after being made aware he forgot to submit a leave slip by the SAO. He said he made a mistake by forgetting to submit his leave slip when he went to Montana to help a family member. He said he felt it was evident he did not do this maliciously. He sent emails to his supervisor and team, had an out of office message on Outlook and put the leave on his calendar.

22. [REDACTED]'s Outlook calendar indicates that he took 80 hours of leave from May 29, 2017 to June 9, 2017, and his emails confirm that he notified team members that he would be on leave. According to the DOC, [REDACTED] had 474.9 hours of sick leave and 263 hours of annual leave available on May 29, 2017.

23. DOC provided Board staff with an email dated October 25, 2017, in which [REDACTED] submitted a request for the 80 hours leave, two days after his interview with the SAO. That request was approved by Mr. Pevey on November 1, 2017. DOC provided a copy of payroll's leave records that confirmed that leave was recorded as of November 6, 2017, four months after [REDACTED] returned from leave. The actual leave recorded according to the DOC's payroll records was 71 hours of leave because Monday, May 29, 2017, was Memorial Day.

24. In a written response to Board staff, [REDACTED] day-to-day supervisor, Ms. Witten, confirmed that [REDACTED] was assigned to the project team from March 2016 to June 2018. She said that while she oversaw the project and the work of the team, she was only [REDACTED] official supervisor from May 1, 2018 to June 18, 2018. She said she was not aware that there were any concerns about [REDACTED]'s attendance until the whistleblower investigation. She did not observe anything in [REDACTED]'s attendance that raised concerns in the time he officially reported to her. Ms. Witten told Board staff that [REDACTED] was salaried, so he does not complete time cards. Ms. Witten said she was aware there is currently a just cause investigation being conducted by DOC regarding allegations related to the whistleblower investigation.

25. Mr. Pevey said that up to this point in time he has had no concerns about [REDACTED] attendance or working his required hours. He said he approves [REDACTED] leave requests and that there is no process for [REDACTED] to account for the time he works on his regular days off or after hours. [REDACTED] self-reports verbally or via email to notify him of those changes. He said Mr. [REDACTED]'s work is very autonomous. Other than accountability to his project team and project manager, he is asked to adhere to his work schedule.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees 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 evidence reviewed, [REDACTED] used state time for his private benefit or gain in violation of RCW 42.52.160. [REDACTED] activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010. 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 and they were continuous in nature. In the matter at hand, it is a mitigating factor that [REDACTED] submitted a leave request for the 71 hours annual leave taken.

## **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]s [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] [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. No other claims of alleged violations are pending against [REDACTED] 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 [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 two-thousand, five-hundred dollars (\$2,500) associated with violations of RCW 42.52. The Board agrees to suspend five-hundred dollars (\$500) on the condition that [REDACTED] 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 two-thousand dollars (\$2,000) 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]

10/31/18

Date

Respondent

Presented by:

*Kate Reynolds*  
KATE REYNOLDS  
Executive Director

11/9/18  
Date

**II. ORDER**

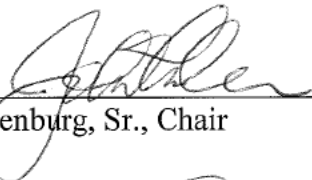
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

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):

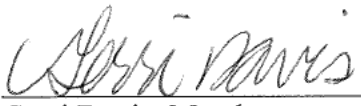
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DATED this 9<sup>th</sup> day of November, 2018

  
\_\_\_\_\_  
John Ladenburg, Sr., 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 \_\_\_\_\_