

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████,

Respondent.

No. 2018-020

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 April 11, 2018, the Executive Ethics Board (Board) received a complaint referred by the Employment Security Department (ESD) alleging that ██████████), Tax Specialist 4 for the ESD, may have violated the Ethics in Public Service Act by using state resources for her private benefit and gain.

2. ██████████ was first hired by ESD on March 7, 1978 and was appointed into her current position of Tax Specialist 4 on September 18, 2017.

3. On April 9, 2018, an ESD employee found documents that were personal in nature and appeared to belong to ██████████. The ESD employee returned the documents to ██████████ and

informed their supervisor of what they had found. ESD HR was informed of the incident. As a result, HR reviewed [REDACTED]'s internet activity for the period of March 12 through April 6, 2018.

4. ESD indicated in their referral to the Board that it was believed that [REDACTED] was using her computer to conduct business for outside organizations; The NW Friesian Horse Club (NWFHC) and the River Dance Ranch, LLC.

5. The NWFHC website identifies [REDACTED] as the treasurer.

6. River Dance Ranch became a Washington Limited Liability Company on June 20, 2016. The Registered Agent on record is David Petrie and the company Governor is identified as [REDACTED].

7. On April 17, 2018, Board staff requested a copy of [REDACTED] computer hard drive. Board staff received [REDACTED] laptop computer, HP480 Elite with ESD tag # 07952, on April 20, 2018. On April 23, 2018, Board staff removed the hard drive from the computer and produced a bit by bit image using Magnet Forensic Axiom software. The image was then copied and the copy was used in the forensic analysis.

8. On April 26, 2018, Board staff requested the prior 24 months of Outlook emails sent and received from [REDACTED] state email account.

9. Board staff reviewed [REDACTED] internet activity and Outlook emails for personal use including supporting the NWFHC and River Dance Ranch, LLC. [REDACTED] utilized Chrome and Internet Explorer as her web browsers to access websites.

10. Board staff located 203 emails directly related to conducting the work of treasurer for the NWFHC. Of those, 171 were sent from [REDACTED] ESD Outlook account and 58 emails contained at least one attachment. Attachments included PDFs, Word documents, Excel spreadsheets, and photos.

11. Board staff found evidence on [REDACTED] work computer that indicated she was accessing files located on an external storage device identified as a removable drive, volume number 20417D69, CATHY FILES. For the period of December 13, 2013 through March 27, 2018, 76 LNK (Linked) file artifacts were identified.

12. [REDACTED] indicated in her response to Board staff that NWFHC is a not-for-profit "horse hobby" club in which she and her husband are members. She further indicated that her involvement with NWFHC is strictly limited to random volunteer activities.

13. [REDACTED] also indicated in her response to Board staff that she and her husband bought a farm in Auburn a few years ago with the intent of boarding horses. She registered the business name, "River Dance Ranch, LLC," with the Secretary of State to secure the name. Ms. [REDACTED] further indicated that the intent of establishing the LLC was in the event they ever boarded horses any agreement would be between the LLC and the horse-owner for liability and insurance purposes.

14. [REDACTED] indicated that as of May 24, 2018, they have not boarded any horses.

15. Board staff located 158 emails directly related to the sale of Poodle puppies. Of those, 122 were sent by [REDACTED] from her work computer. Seventy-four of the emails contained at least one attachment. Attachments included PDFs, Word documents, Excel spreadsheets, photos related to puppy sale contacts and spreadsheets identified as "litter sale list." A majority of the emails were sent/received from Debra Ferguson, business partner.

16. Board staff found evidence on [REDACTED] work computer that indicated she was accessing files located on an external storage device identified as a removable drive, volume number 20417D69, CATHY FILES. For the period of May 19, 2017 through February 22, 2018, 51 LNK (Linked) file artifacts were identified.

17. [REDACTED] resigned from ESD and no longer works for the state.

## 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 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.

3. 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.

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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees and the violations were continuous in nature. It is a mitigating factor that [REDACTED] no longer works for the state.

### **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 her 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 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.

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**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]  
Respondent

10/23/18  
Date

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

10/26/18  
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

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ACCEPTED in its entirety;

\_\_\_\_\_

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):

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\_\_\_\_\_

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

\_\_\_\_\_  
John Ladenburg, Chair

\_\_\_\_\_  
Shirley Battan, Vice-Chair

\_\_\_\_\_  
Lisa Marsh, Member

\_\_\_\_\_  
Anna Dudek Ross, Member

\_\_\_\_\_  
Gerri Davis, Member

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

\_\_\_\_\_, Respondent Date