

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Sean Dougherty  
Respondent.

No. 2019-017

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Sean Dougherty, 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 1, 2019, the Executive Ethics Board (Board) received a referral from the State Auditor's Office (SAO) alleging that Sean Dougherty (Mr. Dougherty), a Fish and Wildlife Biologist 4 (BIO4) with the Department of Fish and Wildlife (DFW), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. Mr. Dougherty was hired by the DFW on February 13, 2013, as a BIO2. He was promoted to a non-permanent appointment as a Resource Scientist 4 on August 15, 2015. On March 1, 2016, Mr. Dougherty returned to a permanent appointment as a BIO2. On November 16, 2016, he was promoted to a BIO4 which is the position he presently holds.

3. According to the SAO investigative report, while conducting an investigation regarding the personal use of state resources by a different employee at the DFW, they found two emails from Mr. Dougherty regarding the March Madness sports pool. The first email announced the pool and was sent to 28 state email addresses and five personal email addresses. The email also outlined the rules for the sports pool and provided a link to the site where participants could create their brackets. The second email gave the results of the pool and indicated at least 11 individuals participated. They also found a document with a tournament bracket used for the betting pool on Mr. Dougherty's hard drive.<sup>1</sup>

4. According to the SAO investigative report, during an interview with Mr. Dougherty, he said a manager at DFW asked him to run the sports pool as a team-building exercise. The manager has since retired. Mr. Dougherty said the money won in the pool was used to throw a party for staff members.

5. Board staff reviewed Mr. Dougherty's emails for the period of two years from April 1, 2017 to April 1, 2019, and found the two emails from Mr. Dougherty to DFW staff that were originally identified by the SAO. The first, dated March 12, 2018, with the subject line, "March Madness..... yet again" was sent to 28 DFW employees. The email discussed the details of the "Pick'em Pool" including the statements "\$5 gets you into the pool," "The best bracket wins the pot," and "Worst bracket gets \$10, double your money." Mr. Dougherty identifies himself as the "Chair of the March Madness Coordination Committee."

6. The second email was sent by Mr. Dougherty, dated April 4, 2018, with the subject line, "March Madness...yet again." The email is addressed to four DFW employees. The email identifies the winner and losers for the 2018 March Madness pool.

---

<sup>1</sup> Board staff were provided copies of the emails dated March 12, 2018 and April 4, 2018 and a copy of the document with the tournament bracket dated March 15, 2018 by the SAO.

7. Board staff were advised by DFW that as a part of their review of information requested by Board staff, they searched the vault for all of Mr. Dougherty's emails using the key terms "March Madness" and "Pick'em Pool." According to DFW, they located the following two additional emails sent by Mr. Dougherty regarding the March Madness Pool, which were provided to Board staff.

- On March 16, 2015, Mr. Dougherty sent an email with the subject line, "March Madness" to approximately 28 DFW employees. Mr. Dougherty states in part, "...In accordance with my newly self-proclaimed role of Morale Officer I have taken over the management of the 2015 NCAA Men's Basketball Tournament Pick 'em. Attached is the 2015 bracket in excel format, if you are interested in participating in this office pool, fill out the bracket and send it to my personal email address: [sdoughe3@gmail.com](mailto:sdoughe3@gmail.com) using your personal email address. This will serve two purposes, 1) We avoid most ethics violations and 2) I get to sell everyone's email to SPAM entities (just kidding). Also the buy in to the pool is going to be \$5 with the winner taking all....." The email included an attached bracket for the 2015 tournament.
- On March 13, 2017, Mr. Dougherty sent an email with the subject line "March Madness" to approximately 29 DFW employees. The email discusses the details of the March Madness Pool including, "Entry fee is \$5" and "The person that finishes in Last place gets \$10....." and "....."Winner takes the rest...." Mr. Dougherty also states, "...FYI I don't get paid for this." The email includes a statement under "A highlight of the rules," that "You cannot use your WDFW email to register with the Pick 'em League," and includes a link to [fantasysports.yahoo.com](http://fantasysports.yahoo.com).

8. In Mr. Dougherty's initial written response to Board staff, he responded to the allegations made by the SAO and the March 12, 2018, email. Mr. Dougherty stated that the original purpose of the email on March 12, 2018, was to provide a team building opportunity for employees by participating in a March Madness Tournament Bracket Challenge. He said he was asked by Jeff Korth (Mr. Korth), the DFW Region 2 Fish Program Manager at that time, to put together the online bracket challenge, to collect a token \$5 from everyone on the team wanting to participate, and invite other employees to participate.

9. Mr. Dougherty said that the "winnings" were then used to buy beer and snacks for everyone who participated and others that wished to attend the final game when they met off duty as part of this team building. Mr. Dougherty said that at no time did he as the organizer, or any other individual, put this bracket challenge together as a means of betting or making money as an individual. He said the SAO investigation described this team building opportunity as a "sports gambling pool," which he said was simply not an accurate characterization. Mr. Dougherty said he believes this situation was a de minimis use of state resources given that he directed those interested to an outside source ([www.yahoo.com](http://www.yahoo.com)) to participate. He said he did not use any significant amount of internet time or work time to send out the emails. Mr. Dougherty said the bracket referenced in the SAO investigation was actually Mr. Korth's bracket, not his. He said prior to being asked by Mr. Korth, all participation in the pool was via paper and organized by someone else on his team.

10. Mr. Dougherty said that at no time was it his intent to establish or run a sports betting pool. He indicated that the interpretation of the rules in this manner creates an illusion that this was an ongoing, for profit venture, which it clearly was not. He did not believe that Mr. Korth's directive was for him to establish a sports betting pool nor violate state ethics laws. He said if this was a violation, it was an inadvertent nominal violation, and hopes that it will not result in any additional actions.

11. Board staff contacted Mr. Dougherty and advised him about the additional emails regarding the March Madness Pool, dated from March 2015 and March 2017. Mr. Dougherty confirmed that he took over the March Madness Pool in 2015. Board staff emailed Mr. Dougherty with several follow-up questions and received the following responses: Mr. Dougherty's responses are in bold.

- On all of the emails sent out by you to DFW staff regarding the March Madness Pool, you discuss the entry fee of \$5, the worst bracket wins \$10 and the overall winner wins the pot. There is no mention of a team get together or using the pool funds for that get together. Could you address this? **The team get together was decided later after games began and once a venue was able to be discussed.**
- Is it accurate to say that the funds raised in the pool was not used for the get together but paid out to the winners as stated in the emails? **No, that is not an accurate characterization. There has not been a time, in my memory or participation, where the funds were used for anything other than a work group/spouse/friend gathering.**
- Board staff provided Mr. Dougherty with a copy of the email sent by Mr. Dougherty, dated March 13, 2017, with the subject line "March Madness" and referred him to the following statement in the body of the report. *"I still need to pay out last year's winnings to Charity (winner, sort of) and Sean Comstock (Loser, yup).... Before anyone gets too snarky, you get what you pay for and FYI I don't get paid for this. I should though."* **This is referencing someone who no longer works for DFW and her winnings were used at the party and for her to use to join the next year's pool. The other individual's "earnings" were likewise used at the party.**

- Did you participate in the March Madness Pool? **Yes.**

12. Other than the emails discussed above, Board staff found no other examples of personal use of emails by Mr. Dougherty.

13. Board staff were provided with a copy of what appears to be a Letter of Expectations (LOE) dated February 8, 2019, addressed to Mr. Dougherty from Eric Garder (Mr. Garder), Assistant Director with DFW. The letter acknowledges the allegation made by the SAO regarding Mr. Dougherty's use of his state computer to participate in a sports pool, and directs Mr. Dougherty to review the applicable ethics laws and DFW policies. It also directs Mr. Dougherty to take the 1.5 hour, WA-State Ethics in State Government class and the one day, WA-State Ethics in Leadership and Decision Making class.

## **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.

WAC 292-110-010 Use of state resources states, prior to April 1, 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.

2. The Executive Ethics Board's Advisory Opinion 02-05 states in part that, "[a]s gambling activity results in private financial gain, any use for gambling would not be de minimis use under the rule. Therefore, unless an agency is specifically authorized to conduct gambling activity by law, any use of state resources to conduct gambling would violate the Ethics in Public Service Act." The Advisory Opinion also states that "[g]ambling activity, including conducting a sports pool, is a private activity that is incompatible with official state duties. Allowing even an occasional or limited use of state facilities to facilitate such activities undermines public confidence in state government.

3. Based on the evidence reviewed, Mr. Dougherty used state time and resources for his private benefit or gain in violation of RCW 42.52.160 and EEB Advisory Opinion Number 02-05. Mr. Dougherty's activities do not meet the exceptions for the use of state resources as permitted in 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 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 as a result of the investigation, Mr. Dougherty received a Letter of Expectations directing him to attend ethics training and review the applicable ethics laws and DFW policies.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Sean Dougherty 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. Sean Dougherty 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. Sean Dougherty 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. Sean Dougherty 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 Sean Dougherty 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. Sean Dougherty 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 Sean Dougherty 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 Sean Dougherty 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 Sean Dougherty 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, Sean Dougherty 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, Sean Dougherty 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. Sean Dougherty agrees to pay a civil penalty in the amount of five-hundred dollars (\$500) associated with violations of RCW 42.52. The Board agrees to suspend one-hundred dollars (\$100) on the condition that Sean Dougherty 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 four-hundred dollars (\$400) 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.

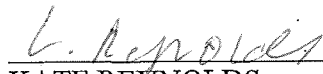
## II. CERTIFICATION

I, Sean Dougherty, 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.

  
SEAN DOUGHERTY  
Respondent

10/16/19  
Date

Presented by:

  
KATE REYNOLDS  
Executive Director

10/8/19  
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):

\_\_\_\_\_  
\_\_\_\_\_

DATED this 8<sup>th</sup> day of November, 2019.

Shirley Battan  
Shirley Battan, Chair

Gerri Davis  
Gerri Davis, Vice Chair

Lisa Marsh  
Lisa Marsh, Member

Approved via telephone  
Anna Dudek-Ross, Member

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

Sean Dougherty, Respondent      Date