

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2020-010

4 Alyssa Fobes,

FINAL ORDER

5 Respondent
6

7
8 **I. PROCEDURAL HISTORY**

9 On January 3, 2020, the Executive Ethics Board (Board) received a complaint alleging
10 that Alyssa Fobes (Ms. Fobes), former Attendant Counselor 1, Department of Social and Health
11 Services (DSHS), may have violated the Ethics in Public Service Act. The complaint alleged
12 that she submitted three days (24 hours) of jury duty leave and did not attend jury duty.

13 The Board entered an Order of Default on March 12, 2021. On March 15, 2021, Board
14 staff provided Ms. Fobes with notice of the Board's Order of Default by regular and certified
15 mail.

16 Pursuant to WAC 292-100-060(4) Ms. Fobes was allowed 10 days to request vacation of
17 the Order of Default. Ms. Fobes has not moved to vacate the order entered on March 12, 2021.

18 **II. FINDINGS OF FACT**

19 1. Ms. Fobes was first hired as an Attendant Counselor 1 at the Rainier School¹,
20 DSHS in July 2017. She was in that position for all times pertinent to this investigation.

21 2. On November 10, 2019, Ms. Fobes submitted of leave for "Jury Duty" on the
22 following days, Tuesday, November 5 through Friday, November 8, 2019 (24 hours). Leave
23 taken for jury duty is leave that is not subtracted from the accrued leave balance.
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¹ Rainer School - is a rehabilitation center for individuals with intellectual and developmental disabilities.

1 3. On December 6, 2019, Debbie Harvey (Ms. Harvey), Attendant Counselor
2 Manager at the Rainer School and Ms. Fobes direct supervisor became concerned about Ms.
3 Fobes claim that she was at jury duty on Friday, November 8, 2019.

4 4. Ms. Harvey contacted Michelle Wagner (Ms. Wagner), Fiscal Analyst, and
5 requested that she look into Ms. Fobes claim that she was at jury duty on Friday November 8,
6 2019.

7 5. Ms. Wagner contacted the Pierce County Superior Court, Jury Coordinator,
8 Connie Janiga (Ms. Janiga). Ms. Janiga indicated via email that their records showed that Ms.
9 Fobes was marked in as “Expected” on November 4, 2019. Ms. Janiga explained that
10 “Expected” means that Ms. Fobes received a red and white badge and was required to call in
11 during the week to determine if she was actually needed for jury duty. If Ms. Fobes were to
12 have appeared for jury duty, their records would have indicated so. Ms. Janiga indicated in her
13 response to Ms. Wagner that Ms. Fobes did not come in for jury duty at any time.

14 6. Ms. Fobes was place on alternate assignment while the internal investigations
15 was taking place. Ms. Fobes resigned prior to the completion of the DSHS internal investigation.

16 7. At the time Ms. Fobes resigned, she was paid for her accrued leave balance of
17 10.19 hours.

18 8. According to Ms. Wagner, she had not receive direction from Ms. Harvey to
19 change Ms. Fobes’ jury duty to Leave Without Pay (LWOP) until after Ms. Fobes had already
20 resigned making it too late to do an overpayment.

21 9. Ms. Wagner indicated in a response to Board staff that the overpayment would
22 have been calculated for 24 hours of work at \$19.01 per hour totaling \$456.27.

1 **CONCLUSIONS OF LAW**

2 1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
3 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,
4 with respect to employees in the executive branch of state government. The Board has
5 jurisdiction over Alyssa Fobes, whose actions occurred while she was a state employee.
6 Based on the evidence reviewed, Ms. Fobes has used state resources (time) for her private benefit
7 or gain in violation of RCW 42.52.160. Ms. Ms. Fobes' activities do not meet the exceptions for
8 the use of state resources as permitted in WAC 292-110-010.

9 2. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

10 No state officer or state employee may employ or use any
11 person, money, or property under the officer's or employee's
12 official control or direction, or in his or her official custody, for
the private benefit or gain of the officer, employee, or another.

13 Under WAC 292-110-010 Use of state resources states, in part:

14 **(3) Permitted personal use of state resources.** This subsection applies to any use of
state resources not included in subsection (2) of this section.

15 (a) A state officer or employee's use of state resources is de minimis only if each
of the following conditions are met:

- 16 (i) There is little or no cost to the state;
- 17 (ii) Any use is brief;
- 18 (iii) Any use occurs infrequently;
- 19 (iv) The use does not interfere with the performance of any state officer's
or employee's official duties;
- 20 (v) The use does not compromise the security or integrity of state
property, information systems, or software;
- 21 (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
- 22 (vii) The use is not for supporting, promoting the interests of, or soliciting
for an outside organization or group.

23 3. The Board is authorized to impose sanctions for violations to the Ethics Act
pursuant to RCW 42.52.360.

24 4. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
25 120-030 have been reviewed.
26

1 **III. FINAL ORDER**

2 Based on the foregoing:

3 IT IS HEREBY ORDERED Respondent Alyssa Fobes is liable for and shall pay a civil
4 penalty of one-thousand dollars (\$1,000). The payment shall be made to the Executive Ethics
5 Board within forty-five (45) days of this Order.

6 DATED this 14th day of May 2021.

7
8 approved via virtual meeting
9 Shirley Battan, Chair

Absent
Gerri Davis, Vice Chair

10 approved via virtual meeting
11 Jan Jutte, Member

approved via virtual meeting
Earl Key, Member

12 **APPEAL RIGHTS**

13 **RECONSIDERATION OF FINAL ORDER – BOARD**

14 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
15 must be in writing and must include the specific grounds or reasons for the request. The request
16 must be delivered to Board office within 10 days after the postmark date of this order.

17 The Board is deemed to have denied the request for reconsideration if, within 20 days
18 from the date the request is filed, the Board does not either dispose of the petition or serve the
19 parties with written notice specifying the date by which it will act on the petition.
20 RCW 34.05.470.

21 The Respondent is not required to ask the Board to reconsider the Final Order before
22 seeking judicial review by a superior court. RCW 34.05.470.

23 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

1 A Final Order issued by the Executive Ethics Board is subject to judicial review under
2 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
3 are provided in RCW 34.05.510 - .598.

4 The petition for judicial review must be filed with the superior court and served on the
5 Board and any other parties within 30 days of the date that the Board serves this Final Order on
6 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
7 or personal service.

8 A petition for review must set forth:

- 9 (1) The name and mailing address of the petitioner;
- 10 (2) The name and mailing address of the petitioner's attorney, if any;
- 11 (3) The name and mailing address of the agency whose action is at issue;
- 12 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
13 or brief description of the agency action;
- 14 (5) Identification of persons who were parties in any adjudicative proceedings that led to
15 the agency action;
- 16 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 17 (7) The petitioner's reasons for believing that relief should be granted; and
- 18 (8) A request for relief, specifying the type and extent of relief requested.
19 RCW 34.05.545.

20 **ENFORCEMENT OF FINAL ORDERS**

21 If there is no timely request for reconsideration, this is the Final Order of the Board. The
22 Respondent is legally obligated to pay any penalty assessed.

23 The Board will seek to enforce a Final Order in superior court and recover legal costs
24 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
25 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
26 Board.