

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Tamela Merrill

Respondent.

No. 2020-029

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, TAMELA MERRILL, 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 March 5, 2019, the Board notified the Department of Corrections (DOC) that the Board had received a complaint alleging that Tamela Merrill, Secretary Senior, may have violated state ethics laws in regards to using state resources to support her sister who was running for Stevens County Treasurer. Specifically, that she attended a campaign event for her sister's opponent during the workday to record her speech, that she was taking time off of work, without submitting the proper leave to participate in door-to-door campaigning for her sister (EEB Case No. 2019-007).

2. Board staff's investigation of EEB Case No. 2019-007 was narrowly focused on RCW 42.52.180 – Use of Public Resources for Political Campaigns and on the specific incidences identified in

the complaint. Board staff reviewed time cards, leave records, phone records and obtained information from co-workers and supervisors. Board staff's investigation of this matter resulted in an Executive Director Order of Dismissal as unfounded.

3. On April 1, 2019, DOC opened an internal investigation as a result of the Board's notification of the complaint on March 5, 2019. The DOC investigation was broader than the Board's investigation, looking into Ms. Merrill's personal use of state resources, including time, and that she left her worksite for activities unrelated to her work without her supervisor's permission.

4. On April 16, 2020, the Board received a referral from DOC that was based on their internal investigation, which concluded that between October 2017 and December 2018. Ms. Merrill engaged in inappropriate use of state computer resources.

5. Ms. Merrill has worked for the DOC since May of 2007 as a Secretary Senior, located at the DOC office in Colville, Washington and was in that position for all times pertinent to this investigation.

6. Ms. Merrill's work hours are Monday through Friday, 8:00 am through 4:30 pm, with a 30 minute lunch period. Her duties include answering the phones, office receptionist, ordering office supplies, and going to the county courthouse to pick up and drop off documents.

7. DOC investigators interviewed Ms. Merrill on May 13, 2019 and on July 16, 2019. Ms. Merrill denied that she misused state computer resources indicating that any personal use of the internet was "de minimis" or occasional personal use. Ms. Merrill acknowledged that she was aware of the DOC Internet Usage Policy, that she had reviewed it and was current on her Internet Usage annual in-service training.

8. Ms. Merrill told DOC investigators that she was not aware of anyone having her state logon ID and that she has not shared it with anyone. Ms. Merrill told DOC investigators that she would sometimes use her work computer/internet to look for clothes, recipes or for something to make for dinner.

9. Ms. Merrill admitted to DOC investigators that she used her state computer to review her children's senior pictures and that she received emails related to her children's school activities. The DOC investigator asked Ms. Merrill to provide specifics regarding how often she used the state computer to conduct personal business. She replied "Not daily. Maybe two times a week, twice in two weeks. I don't know, I don't keep track. I don't think I do it that often."

10. The DOC investigator asked Ms. Merrill if she accessed social media sites. Ms. Merrill denied accessing YouTube, Facebook, Twitter, Instagram, Craigslist, Ebay, and Pinterest. The DOC investigator showed Ms. Merrill a spreadsheet, which showed some of her internet usage and was then asked about accessing a Dierks Bentley YouTube video on December 6, 2018. Ms. Merrill told the DOC investigator that she had forgotten about that and sometimes she would play music through YouTube.

11. The DOC investigation of Ms. Merrill's internet used showed that she accessed YouTube at least once a week and on some occasions, daily, for hours at a time.

12. The DOC investigator asked Ms. Merrill if she had conducted searches on EBay and Craigslist for Broken Knives. Ms. Merrill told DOC investigators "she did not remember" that but her son was in high school and refurbished knives. She denied allowing her children access to her state computer. After she reviewed her statement to the DOC investigator, she changed "she did not remember" to "she did remember" looking that up after it was brought to her attention.

13. The DOC investigation showed Ms. Merrill had accessed Walmart and Safeway websites. The Walmart searches were for personal items such as undergarments and other clothing items for men and women. It also showed purchases from Walmart made using PayPal. Ms. Merrill acknowledged purchases using her credit card but denied using PayPal.

14. Ms. Merrill told DOC investigators that she has used the Walmart online, pick-up in store option but she believed that when she has done that she used her personal cell phone.

15. The DOC internal investigation reviewed Ms. Merrill's internet history for the period of October 4, 2017 through December 31, 2018. The total amount of time related to non-work related internet browsing for the almost four months equals 128.2 hours. Some examples below:

- September 2018 – 56.9 hours of non-work related browsing activity, including steaming music, recipes and Chewelah High School Football.
- October 2018 – 38.8 hours of non-work related browsing activity, including internet sites for Safeway, Dierks Bentley, Garth Brooks, Walmart, Facebook and YouTube.
- November 2018 – 17.2 hours of non-work related browsing activity, including Burlington Coat Factory, Target, baby showers, Nike, eBay, Party City, Martha Stewart, Grainger, Facebook, Healing Touch Massage, Safeway, Dinner at the Zoo, Taste of Home, and Costco. Ms. Merrill went into the office on November 22, 2018, Thanksgiving Day holiday, and used the state computer internet to access websites focused on “Black Friday” shopping deals and shopping for an iPhone and Otter Box protective case.
- December 2018 – 15.3 hours of non-work related browsing activity, including Grainger, Facebook, Healing Touch Massage, Safeway, Dinner at the Zoo, Taste of Home, and Costco.

16. Ms. Merrill admitted to shopping at Walmart during the workday but said that she did it during her breaks and on her lunch period. She further stated that if she had extra time saved up from working over or coming in early (flextime) she would use that extra time to go shopping at Walmart rather than submit overtime. The DOC investigator asked Ms. Merrill if she kept track of this time and she stated that she did not.

17. Ms. Merrill told DOC investigators she flexes her schedule by coming in or staying late to attend to personal business during a day. Ms. Merrill also stated that she would accrue flextime but does not keep a record.

18. In addition to her internet usage, Ms. Merrill acknowledged to the DOC investigators that she had used the office printer to print documents related to her children's health and school activities but could not provide specifics.

19. The DOC investigators asked Ms. Merrill about her usage of the office phone for personal calls. She stated that she occasionally received personal calls but could not say how often and that she could not control if someone wanted to call her at work.

20. Board staff was unable to obtain a copy of Ms. Merrill's work computer hard drive and therefore was unable to independently review the data to verify the DOC findings.

21. Ms. Merrill received a five-day suspension as a direct result of her personal use of state information technology resources for her personal benefit and gain and in doing so violated DOC policies.

## **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. Merrill used state resources for a 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 and they were continuous in nature. In the matter at hand, it is a mitigating factor that Ms. Merrill received a five-day suspension for these violations.

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

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Tamela Merrill 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. Tamela Merrill 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. Tamela Merrill 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. Tamela Merrill 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 Tamela Merrill 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. Tamela Merrill 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 Tamela Merrill 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 Tamela Merrill 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 Tamela Merrill 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, Tamela Merrill 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, Tamela Merrill 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. Tamela Merrill 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 one thousand dollars (\$1,000) on the condition that Ms. Merrill 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, Tamela Merrill, 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.

 1/29/21  
TAMELA MERRILL Date  
Respondent

Presented by:

 3/12/2021  
KATE REYNOLDS Date  
Executive Director



**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 12<sup>th</sup> day of March, 2021

*Approved via Virtual Meeting*  
\_\_\_\_\_  
Shirley Battan, Chair

*Approved via Virtual Meeting*  
\_\_\_\_\_  
Gerri Davis, Vice-Chair

*Approved via Virtual Meeting*  
\_\_\_\_\_  
Earl Key, Member

*Approved via Virtual Meeting*  
\_\_\_\_\_  
Anna Dudek Ross, Member

*Approved via Virtual Meeting*  
\_\_\_\_\_  
Jan Jutte, Member

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

\_\_\_\_\_  
Tamela Merrill, Respondent                      Date