

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Rosalba Valdez

Respondent.

No. 2020-033

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Rosalba Valdez 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 30, 2020, the Executive Ethics Board (Board) received a Whistleblower referral (WB) from the State Auditor's Office (SAO) alleging that Rosalba Valdez (Ms. Valdez), a Corrections Specialist 4 (CS4) with the Department of Corrections (DOC), Community Corrections Division (CCD), may have violated the Ethics in Public Service Act by using her position to secure special privileges and using state resources for private benefit or gain.

2. According to DOC, Ms. Valdez was hired by DOC in August 2015 as a full-time, permanent CS4 at the Kennewick Field Office. DOC said that Ms. Valdez worked at the Department of Social and Health Services (DSHS) prior to DOC.

3. According to the SAO, they received a complaint that Ms. Valdez was using state equipment during working hours to do work as an adjunct instructor for Heritage University (HU). The SAO said they reviewed Ms. Valdez's emails and a forensic image of her computer hard drive for the period of November 6, 2018 through August 14, 2019.

4. According to the SAO, they found 17 emails to and from Ms. Valdez regarding her employment with HU. They said the emails included correspondence arranging for Ms. Valdez's interview for a position at HU. The emails also included attachments of documents necessary for her employment with the university. The SAO said they found eight documents related to her employment with the university including Ms. Valdez's signed employment contract with the university.

5. According to the SAO, there was a total of 1,664 minutes, or 27.73 hours, of internet use that they considered to be non-work related. The SAO said there were 207 separate instances of non-work related internet activity with 52 instances lasting longer than 10 minutes. The single longest instance of non-work related activity lasted 45 minutes.

6. The SAO said they identified 565 minutes, or 9.42 hours, of non-work related internet activity related to the Ms. Valdez's employment at HU and found 76 minutes, or 1.26 hours, of non-work related internet activity related to Ms. Valdez's private employment. According to the SAO, the remaining 1,023 minutes, or 17.05 hours, of non-work related internet activity involved visits to various news, retail, and relationship advice websites.

7. The SAO said that during an interview, Ms. Valdez said she thought she could use her computer for this activity as long as it was during breaks. She said that in her 20 years of state service no one explained to her that certain types of usage were not allowed. She believed that as

long as it was brief it was allowed. According to the SAO, Ms. Valdez said that it was not until recently that her supervisor explained to her what types of computer activity were not allowed.

8. The SAO provided Board staff with copies of the emails between Ms. Valdez and HU staff regarding her employment with HU. The emails were sent from and received at Ms. Valdez's DOC work email address. Also provided was the following documents associated with Ms. Valdez being employed with HU, that were attached to those emails.

- The Adjunct Term Contract between Ms. Valdez and HU, dated July 8, 2019;¹
- Ms. Valdez's application for the position at HU for the fiscal year 2019 through 2020;
- Ms. Valdez's Direct Deposit Form;²
- Social Security Administration documents; and
- The Course Syllabus for the College of Arts and Sciences Social Work Department.

9. Board staff reviewed an image of Ms. Valdez's internet history on her work computer that was provided by DOC. Board staff also reviewed a spreadsheet provided by the SAO listing Ms. Valdez's internet history for the period of November 6, 2018 through October 17, 2019. As a result of those reviews, Board staff found that Ms. Valdez visited the following websites:

- News websites such as CNN, Tri-cityherald.com, KNDU.com, nbcrighnow.com, and yaktrineews.com at least once on approximately 28 different days.

¹ Ms. Valdez listed her work email address at the DOC as her contact email on her Adjunct Personnel Record and HU application.

² In an email from Jami Hanks (Ms. Hanks), Administrative Assistant at HU, to Ms. Valdez at her DOC work email address, Ms. Hanks advised her that her pay scale is based on the number of students and credits, but her contract should be around \$2,457.

- Social websites such as yourtango.com, datingadviceguru.com, eharmony.com, youqueen.com and herway.net at least once on approximately 41 different days.
- Banking and billing sites such as quickpayportal.com, myfedloan.org and City of Pasco payments.gov at least once on approximately 11 different days.
- Ms. Valdez visited Heritage.edu related sites at least once on approximately 29 different days between June 27, 2019 and October 17, 2019.

10. Board staff contacted Ms. Valdez on the telephone and asked her about the websites she was visiting. In regards to HU, she said HU kept sending her things to fill out and she didn't have a personal email address at that time. Ms. Valdez said she had no idea she was on the website that much. As to the social websites, she said that was personal. When asked about the billing and banking sites, she said it was just a once in awhile thing. She would get to the office and realize she needed to pay a bill.

11. In a written response to Board staff, Ms. Valdez she said that she may have been logged on the websites a little long but wasn't actually completing any work. She said she was just getting started with HU and was just emailing back and forth. Ms. Valdez said she has talked with her supervisor and now understands the policy. She said she has been reviewing the related policies and is now very aware of what she can and cannot do with state resources.

12. Board staff were provided a copy of Memorandum of Expectations (MOE) dated November 27, 2019 with the subject title, Memo of Expectation-Outside Employment. The MOE was from Corrections Specialist Supervisor Geronimo Coronado (Mr. Coronado)³ and addressed to Ms. Valdez.

³ Ms. Valdez's supervisor.

13. The MOE states in part:

On November 19, 2019, I met with you and asked if you had become employed outside of the Department of Corrections (DOC), as defined within DOC Policy 850.025. You admitted that you have been employed with Heritage University, teaching one class, as of August 2019 with an expected end date of December 2, 2019...

.....Prior to my discussion with you on November 19, 2019, you had not notified/reported your outside employment activities to your Employer, as required, prior to engaging in this activity....

It is my expectation that you abide by the WFSE contract and DOC policies and that you complete and submit DOC 03-026 to me on or before close of business November 21, 2019. On November 19, 2019, you submitted DOC 03-026 to me for review and forwarding to the Appointing Authority Ron Pedersen....

14. Board staff were provided with two Outside Employment/Volunteer Activity documents. The first was submitted by Ms. Valdez for an Adjunct Professor at HU, with an effective date of August 19, 2019. The request was denied by Mr. Coronado. In the comment section he stated:

I am recommending a denial of this request, as she informed me today 11/19/19, that she began this outside employment with Heritage University in August 2019 and she is scheduled to end on December 2, 2019. She did not follow policy 850.025 Outside Employment Volunteer Activities, per page 2 of 6, Directive: I. Approval Requirements, A., 1. "Approval will be documented using 03-026 Outside Employment Volunteer Activity before the employee begins the activity."

15. The second Outside Employment/Volunteer Activity request was submitted by Ms. Valdez for an Adjunct Professor position at HU on December 10, 2019. The request was effective January 15, 2020. It was approved by Mr. Coronado and Mr. Pederson.

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, 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. Based on the evidence reviewed, Ms. Valdez used state resources for personal benefit in violation of RCW 42.52.160. Ms. Valdez's activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

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. It is a mitigating factor that Ms. Valdez received a Written Reprimand from her agency.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Rosalba Valdez 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. Rosalba Valdez 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. Rosalba Valdez 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. Rosalba Valdez 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 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. Rosalba Valdez 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 Rosalba Valdez 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 Rosalba Valdez 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 Rosalba Valdez 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, 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, Rosalba Valdez understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties

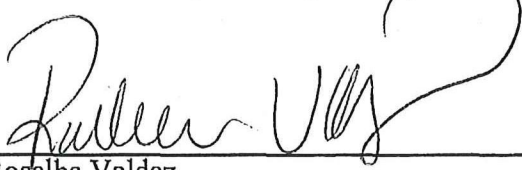
shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Rosalba Valdez 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 Rosalba Valdez 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.

I. CERTIFICATION

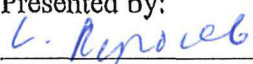
I, Rosalba Valdez, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without 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.



Rosalba Valdez
Respondent

12-14-20

Date

Presented by:


KATE REYNOLDS
Executive Director

1/8/2021

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 8th day of January 2020.

Approved via Virtual Meeting
Shirley Battan, Chair

Approved via Virtual Meeting
Geri Davis, Vice Chair

Approved via Virtual Meeting
Lisa Marsh, Member

Approved via Virtual Meeting
Anna Dudek-Ross, Member

Approved via Virtual Meeting
Jan Jutte, Member

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

Rosalba Valdez, Respondent

Date