

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Dorina Fithen

Respondent.

No. 2020-065

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DORINA FITHEN, 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 November 12, 2020, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) Whistleblower Program alleging that Dorina Fithen, Juvenile Rehabilitation (JR) Community Counselor with the Department of Children, Youth, and Family (DCYF), may have violated state ethics laws by using state computer resources for her personal benefit and gain.
2. Ms. Fithen has worked in state government for 24 years and for all times pertinent to this investigation she was a JR Community Counselor with DCYF.

3. In February 2020, the SAO received a Whistleblower complaint alleging that Ms. Fithen was using state resources to sell jewelry to co-workers. As a part of the SAO investigation, they reviewed Ms. Fithen's work computer hard drive.

4. The SAO's investigation did not find evidence to support the assertion that Ms. Fithen was using state resources to sell jewelry to her co-workers but they did find that she was using state computer resources and time to conduct university coursework.

5. The SAO examined two email attachments related to Ms. Fithen's coursework. See details below:

- Document 3 – created by Ms. Fithen on 9/3/19 at 11:40 am, was being edited for 204 minutes and emailed to the university at 5:16 pm, that same day.
- Document 1 – created by Ms. Fithen 9/30/19 at 9:46 am, was edited for 357 minutes and mailed to the university at 3:43 pm that same day.

6. The SAO's examination of Ms. Fithen's work computer hard drive revealed that she used two internet browsers; Microsoft Edge and Google Chrome. The Edge data went back as far as 2018, but due to the normal computer overwriting process, the data was sporadic. However, the data did show that Ms. Fithen downloaded and saved college course work to her state computer as far back as September 4, 2018.

7. The SAO's examination of Ms. Fithen's Chrome data was consistent from December 30, 2019 through March 27, 2020. It showed that Ms. Fithen accessed the university website on 33 days of the 62 working days.

8. Ms. Fithen told SAO investigators that if she had known she was not supposed to do her coursework during work hours, she would have never done it. Ms. Fithen further indicated that now that she knows she will never do it again.

9. Megan Fiscus (Ms. Fiscus), Program Manager and Ms. Fithen's direct supervisor, told SAO investigators that she was not aware Ms. Fithen was using state resources for her university coursework. Ms. Fiscus indicated that Ms. Fithen would bring in her personal laptop and would do

coursework using her personal laptop during her breaks and “lag times.” Ms. Fiscus confirmed that “lag time” was time that Ms. Fithen was still on the clock but was caught up on her work.

10. Ms. Fiscus told SAO investigators that Ms. Fithen never asked her if she could complete her college course work during her workday but that she could understand why Ms. Fithen may have thought that the course work was related to her work within the Department.

11. Charles David (Mr. David), Regional Administrator, told the SAO investigator that he was not aware Ms. Fithen was using state resources to complete her college course work. Mr. David further indicated that in the past, the department has approved the use of state resources for another employee, and had Ms. Fithen asked him they would have allowed her some hours during the workday to work on her college course work because her studies benefit the Department.

12. The SAO investigator indicated in the SAO final report that it was difficult to determine exactly how much time Ms. Fithen spent on her college course work because she did not always log off the university website and back onto the department’s site.

13. The SAO investigator was able to determine that Ms. Fithen worked on her college course work 33 days out of the 62 possible workdays for the period reviewed.

14. The SAO investigator was able to determine a range of time Ms. Fithen spent conducting her college course work during her work hours; 2,352 minutes (39.2 hours) to 2,875 minutes (47.92 hours).

15. Because of the SAO’s investigation, the DCYF initiated an internal investigation into the allegation outlined in the SAO’s final report.

16. The DCYF internal investigator asked Ms. Fiscus if she was aware of Ms. Fithen’s use of state resources to complete her college course work. Ms. Fiscus again indicated that she was unaware of Ms. Fithen’s personal use and that she does not recall if Ms. Fithen asked her for permission.

17. Mr. David told DCYF investigators that he was unaware of Ms. Fithen's personal use of state resources to complete college courses and that Ms. Fithen never asked him for permission to do so.

18. The DCYF investigator asked Ms. Fithen to explain what de minimis use meant to her. She replied, *"When I have breaks, or am waiting to go to my next meeting or time when I am not working."*

19. The DCYF investigator asked Ms. Fithen to explain how often she would complete university course work on her state computer. She replied, *"Whatever the documents show. I would pull it up on breaks and minimize it when someone would call or when I started working again."* The DCYF investigator asked if she would use it every day. Ms. Fithen indicated that she did not.

20. The DCYF investigator asked Ms. Fithen if she made anyone aware or got permission from anyone in her chain of command. She replied, *"Obviously not, that is why we are here. Had I known I needed to have that, I would have. No one mentioned that I needed to have that, permission or in writing. Everyone knew I was going to school. I wasn't hiding anything."*

21. The DCYF investigator asked Ms. Fithen if anyone told her that she needed permission to use her state computer for schoolwork. She replied, *"No. I just figured since I was doing school work for the state and I was bettering my education and they were paying for it, that it would not be a problem."*

22. The DCYF investigator asked Ms. Fithen if she downloaded or saved documents related to her college course work. She replied, *"Yes."* Explaining that she might have downloaded information that she needed to read pertaining to her college coursework. She said she also saved documents she worked on in Word.

23. The DCYF investigator asked Ms. Fithen why she didn't use her personal laptop to complete her course work. She replied, *"Because I didn't have a computer at the time or it wasn't new enough, until I could buy a new one."*

24. Board staff obtained Ms. Fithen's emails for the period of November 1, 2018 through October 2, 2020. A review of Ms. Fithen's emails revealed that she sent/received 30 emails to her state, home and university email accounts. The 30 emails had 60 attachments related to college course work.

25. Ms. Fithen received a Memo of Understanding from her agency related to her use of state computer resources and state time to promote.

## **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. Fithen 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. Fithen received a memo of understanding from her agency.

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

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Dorina Fithen 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. Dorina Fithen 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. Dorina Fithen further agrees that the evidence available to the Board is such that the Board may conclude they 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. Dorina Fithen waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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 Dorina Fithen 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. Dorina Fithen 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 Dorina Fithen 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 Dorina Fithen 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 Dorina Fithen 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, Dorina Fithen 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, Dorina Fithen 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. Dorina Fithen agrees to pay a civil penalty in the amount of two-thousand dollars (\$2,000) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that Ms. Fithen 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 dollars (\$1,000) 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, Dorina Fithen, 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.

 8-5-21  
DORINA FITHEN Date  
Respondent

Presented by:

 9/10/2021  
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):

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DATED this 10<sup>th</sup> day of September, 2021

*Shirley Battan*  
\_\_\_\_\_  
Shirley Battan, Chair

*Gerri Davis*  
\_\_\_\_\_  
Gerri Davis, Vice-Chair

*Jan Jutte*  
\_\_\_\_\_  
Jan Jutte, Member

*not voting*  
\_\_\_\_\_  
Earl Key, Member

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

\_\_\_\_\_  
Dorina Fithen, Respondent                      Date