**BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD**

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| In the Matter of:<br><br>Kimberly Black,<br><br>Respondent | EEB Case No. 2023-043<br><br>FINAL ORDER |

## I. PROCEDURAL HISTORY

On April 19, 2023, the Executive Ethics Board (Board) received an agency referral alleging that Kimberly Black, an employee of the Washington State Department of Agriculture (AGR), may have violated the Ethics in Public Service Act. The complaint alleged that Kimberly Black violated RCW Chapter 42.52, by using state resources for non-work related activities.

The Board entered an Order of Default on March 8, 2024. On March 11, 2024, Board staff provided Kimberly Black with notice of the Board's Order of Default by regular and certified mail. On March 13, 2024, Kimberly Black received and signed for the certified mail.

Pursuant to WAC 292-100-060(4) Kimberly Black was allowed 10 days to request vacation of the Order of Default. Kimberly Black has not moved to vacate the order entered on March 8, 2024.

## II. FINDINGS OF FACT

1. According to the complaint, Kimberly Black used their AGR issued computer, email, and TEAMS account for personal use, by allegedly harassing a fellow state employee (SE) whom Kimberly Black may have had a former relationship with.

2. According to AGR, Kimberly Black was hired on March 22, 2023, on a temporary employment status, as a Commerce Specialist 2. On April 18, 2023, Kimberly Black was notified that their temporary employment status was being terminated.

3. As part of this investigation, Board staff requested any internal investigation records compiled by AGR. AGR provided Board staff with copies of Kimberly Black's TEAMS messages and TEAMS phone calls for the dates of April 11, 2023 thru April 14, 2023. Additionally, at the request of Board staff, AGR provided all of Kimberly Black's Outlook emails.

4. In reviewing the documents provided by AGR, Board staff noted that Kimberly Black had sent multiple TEAMS messages to SE between the dates of April 11, 2023 thru April 14, 2023:

**April 11, 2023 (9:39am – 3:28pm)**

Kimberly Black sent a total of 91 messages to SE, all personal in nature, including:

- "are you too busy to say hi?"
- "I miss talking to you."
- "hello, is this thing on…"

**April 12, 2023 (10:28am – 11:41am)**

Kimberly Black sent an additional three messages to SE, personal in nature.

**April 13, 2023 (11:56am – 2:02pm)**

Kimberly Black sent an additional 19 messages to SE, personal in nature, including:

- "hey chat with me SE, please."
- "drink it in, chat with me."
- "Again, this is NOT harassment."

**April 14, 2023 (7:32am – 2:45pm)**

Kimberly Black sent an additional six messages to SE, personal in nature.

5. Additionally, between the dates of April 11, 2023 thru April 14, 2023, Kimberly Black attempted 36 phone calls via TEAMS to SE, all of which went unanswered.

6. As part of this investigation, Board staff reviewed all Outlook emails sent by Kimberly Black. The following emails were noted as relevant to this investigation:

**March 22, 2023 2:36pm,** email sent from Kimberly Black's AGR account to SE:

*Please text me [redacted], I want to talk alittle.*

*Kim*

**March 22, 2023 4:19pm,** email sent from Celia Nightingale (LNI), on behalf of SE:

*Hi Kim—*

*I understand you contacted SE in L&I's [division omitted]. If you have any questions or concerns related to L&I or [division omitted] related matters, I'll be happy to assist you.*
*As you are aware, SE, and I on SE's behalf, have asked you many times over the past years not to contact SE. Your calls today are considered harassment, and your use of state resources to make them is not legal.*
*We've notified L&I's internal safety staff of your harassment.*
*Celia*

**March 23, 2023 7:32am,** email sent from Kimberly Black's AGR account to Celia:

*I was not harrassing SE, I was wanting to talk to her about a work issue, Sorry for the misunderstanding.*
*Kim*

**March 23, 2023 8:10am,** email sent from Celia to Kimberly Black:

*Hi Kim—*

*SE shared some of your messages with me and there was nothing work-related that I heard or saw in them.*

*However, as I relayed my earlier email, if you have any work-related items, I'm happy to address them.*

*Celia*

**March 23, 2023 8:18am,** email sent from Kimberly Black's AGR account to Celia:

*I was talking about yesterday not from previous. I have known SE for over 30 years and we had a falling out a few years back and I was extending an olive branch to mend fences. I am sorry it has caused an issue that was not my intent and certainally no harassment was intended, but I did not know if my messages were getting to her because of no response. Again, sorry for the misunderstanding. I have received assistance from someone else about work.*
*Thank you*

**March 28, 2023 12:36pm,** email sent from Kimberly Black's AGR account to SE:

*360-480-4201*

*Kim Black*

**April 6, 2023 10:31am, e**mail sent from Kimberly Black's AGR account to SE:

*You didn't answer me if I could stop by for a short visit?*

*Kim Black*

## CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW, with respect to employees in the executive branch of state government. The Board has jurisdiction over Kimberly Black, whose actions occurred while they were a state employee. Based on the evidence reviewed, Kimberly Black has used state resources for their private benefit or gain in violation of RCW 42.52.160. Kimberly Black's activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

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

Under 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.

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

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

## III. FINAL ORDER

Based on the foregoing:

IT IS HEREBY ORDERED Respondent Kimberly Black is liable for and shall pay a civil penalty of one-thousand-five-hundred dollars ($1,500). The payment shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

DATED this 10th day of May 2024.

Jan Jutte, Chair

Megan Abel, Member

Kelli Hooke, Vice Chair

Cam Comfort, Member

## APPEAL RIGHTS

## RECONSIDERATION OF FINAL ORDER – BOARD

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

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

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

**FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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

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

A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested. RCW 34.05.545.

**ENFORCEMENT OF FINAL ORDERS**

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

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