

Washington State **Executive Ethics Board**



Annual Report for 2009
(January 1, 2009 – December 31, 2009)

December, 2009

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MISSION STATEMENT

To promote integrity, confidence and public trust in state government through education, interpretation and enforcement of the Ethics in Public Service Act.

LEADERSHIP

The Executive Ethics Board is comprised of five members, all appointed by the Governor. The members play a crucial role in the policy setting and enforcement of the Ethics Act.

Chair Neil Gorrell was appointed to the Executive Ethics Board in November, 2005. Neil is a loyal University of Arizona Wildcat undergraduate, earning degrees in Political Science and Philosophy. He received his J.D. from the University of Washington School of Law in 1996. After serving as a law clerk for Judge Elaine Houghton in Division II of the Court of Appeals, he joined the Office of the Attorney General where he focused on civil and regulatory litigation. Neil worked in several divisions of that office, including Labor & Industries, General Legal, Government Compliance & Enforcement, and Torts. Neil was appointed as an Administrative Law Judge in February, 2004. In that capacity he decided cases for a variety of state agencies and local governments. Neil moved to the Employment Security Department in May of 2007, where he currently serves as Deputy Director of the Unemployment Insurance program. In his spare time, Neil has taught courses in civil litigation and administrative law in the paralegal program at the South Puget Sound Community College. He also dotes excessively on his wife and four children.

Vice Chair Linnaea Jablonski was appointed by Governor Gregoire in September 2007 to fill the classified state employee position. Ms. Jablonski has worked for the Office of the Secretary of State since February 2006. Ms. Jablonski received her bachelor's degree from The Evergreen State College in 2002 and is now pursuing a Master's degree in Mediation and Conflict Resolution.

Mike Connelly is the City Attorney for the City of Spokane Valley. He has been with the City Attorney's Office since August 2005. He is also an adjunct professor at Gonzaga University School of Law and previously served as an adjunct professor at Eastern Washington University. Prior to working for the City of Spokane Valley, he was the City Attorney for the City of Spokane for five years. Mike was appointed as a member of the Washington State Executive Ethics Board in March of 2008. He also was a member of the Public Disclosure Commission from July 2001 to July 2006 and was its Chairman from July 2002 to July 2003. Before working as City Attorney, Mike was in practice as Connelly & Connelly, P.S. and emphasized land

use and development law, family law, insurance defense, personal injury and all aspects of civil litigation. During this period of time he also served as the Hearing Examiner for the City of Airway Heights; Pro-tem Hearing Examiner for the City of Pullman, and Pro-tem Superior Court Commissioner for Spokane County. Prior to being with Connelly & Connelly, P.S., Mike was a partner at the law firm of Evans, Craven & Lackie, P.S. with emphasis in insurance defense, civil litigation, employment law, and land use and development law. Mike has been a member of the Washington State Bar Association since 1981. He also served as the former director of the Liberty Lake School Board. Before becoming an attorney, Mike was a Jr. High School Teacher at St. Aloysius. He has lived in the Spokane area his entire life and he and his wife Sue have five children.

Martin Biegelman was nominated by Attorney General Rob McKenna and appointed by Governor Christine Gregoire in November 2008 for a term that expires September 30, 2013. Mr. Biegelman is Director of Financial Integrity at Microsoft Corporation where he leads a global fraud detection, investigation, and prevention program. He is a former federal law enforcement professional having served as a United States Postal Inspector in a variety of investigative and management assignments. He is both a Certified Fraud Examiner and a Certified Compliance and Ethics Professional and the author of books on fraud prevention, compliance and ethics, and identity theft.

Judy Golberg was appointed to the EEB by Governor Locke in 2004 at the recommendation of State Auditor Brian Sonntag for a term that ends on September 30, 2009. Ms. Golberg was a member of the Richland School Board between 1983-1992. She is a member of the League of Women Voters and served as State President from 2003-2005. Ms. Golberg has been employed in the health care field since 1989. Her term expired on September 30, 2009.

Matthew Williams III was nominated by State Auditor Brian Sonntag and appointed by Governor Christine Gregoire in November 2009 for a term that extends through September 2014. Mr. Williams is a retired Lieutenant Colonel in the United States Army and a combat veteran of the Vietnam and Panama Conflicts. Additionally, he was a tenured member of the U.S. Army Special Forces (**Green Berets**), Senior Intelligence Officer for the 1st Special Operations Command (Abn), and the United States Head of Delegation for NATO Intelligence issues. He is a former high school Civics teacher, and is currently a Military Transitions Assistance Program Facilitator for the U.S. Department of Labor. Mr. Williams graduated from North Carolina Agricultural and Technical State University with a B.S. in Business Administration and also received Professional Teaching Certification from Saint Martin's University.

Executive Director Melanie de Leon was appointed to her position by Attorney General Rob McKenna in January 2008. Melanie graduated from the University of Puget Sound with degree in Business Administration. She spent the next 13 years as an Air Force officer. She completed a Master of Arts in Public Administration

while in the Air Force. Upon leaving active duty, Melanie became a Quality Manager for a local software manufacturing company and worked her way up to run the manufacturing facility. During this time, Melanie completed her law degree at Seattle University School of Law. She started working for the Attorney General's Office in 2001, prosecuting cases for the Office of the Insurance Commissioner, and then litigated juvenile dependencies and parental terminations. After a brief time as a criminal prosecutor, Melanie became a staff attorney for the Department of Health, working with the Medical and Chiropractic Commissions.

GENERAL INFORMATION

Biennial Budget: \$941,259

Board Members:

Judy Golberg (1/1/05 – 9/30/09)
Neil Gorrell (11/1/05 – 9/30/10)
Linnaea Jablonski (09/01/07-09/30/12)
Michael Connelly (3/31/08 – 09/30/11)
Martin Biegelman (11/11/08-9/30/13)
Matthew Williams III (11/7/09-9/30/14)

Staff:

Melanie de Leon, Executive Director
Ruthann Bryant, Administrative Officer
Sue Jones, Investigator
Nancy Lewin, Investigator

Legal Counsel:

Jerry Anderson, Senior Assistant Attorney General, Counsel to
the Board
MB Newberry, Assistant Attorney General, Counsel to Staff
and Chief Prosecutor

Contact Information:

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BACKGROUND

The Executive Ethics Board (EEB) is an independent board made up of five individuals who are appointed by the Governor. The Office of the Attorney General provides staff for the Board. Board members strongly believe in the mission of the Board: improving the public's confidence in state government by ensuring that state officers and employees conduct themselves with the highest ethical and moral standards and they conduct the state's business in a manner that advances the public's interest.

The Board's goals for 2009 came from their 2009-2013 strategic plan and include:

- **Promoting knowledge of the Ethics in Public Service Act to all state employees and officers;**
- **Evaluating and improving the complaint process;**
- **Developing methods and procedures to evaluate and ensure compliance with the Ethics Act; and**
- **Evaluating staff capacity and training to meet organizational challenges**

The Board Members and staff worked aggressively to fulfill these goals.

Due to budget constraints, the Board now meets the second Friday of every other month.

Board Activities

Advisory Opinions

The Board began an in-depth review of all of its previously issued Advisory Opinions (AO) to determine if the advice was still current and applicable or whether the AO needed to be retired, repealed or revised. Throughout 2009 the Board reviewed the following AOs:

96-05	Revised	<i>Section 4 Employee – Limitations on Gifts</i>
96-09	Retired	<i>Section 4 Employees – Hosted Reception – Acceptance of Food & Beverage</i>
96-09A	To Be Retired When New Model Rules Published	<i>Boards & Commissions Disclosure Requirements – Voting Abstention Requirements</i>

97-09	Repealed	<i>Receipt of Gratuity or Reward – Beneficial Interest in State Contract</i>
97-11	To Be Retired Divestiture Rule to be Included in Model Rules	<i>Financial Interests/Board Membership</i>
98-03	Retired	<i>Community Colleges - Acceptance of Gifts</i>
98-04	Revised	<i>Elective Office – Confidential Information</i>
98-08	Revised	<i>Conflict of Interest – Board Membership</i>
99-03	Revised	<i>Outside Compensation – Collegiate Athletic Coaches</i>
99-04	Revised	<i>Conflict of Interest – Spouse’s Business Interest</i>
00-04	Retired	<i>Conflict of Interest – Outside Employment</i>
00-08	Review in Progress	<i>Use of State Resources/Political Campaigns/Officer or Employee Title</i>
01-04	Retired	<i>State Officer’s Outside Business Relationship with an Agency they Oversee</i>
01-07	Revised	<i>Guidance to State Agencies regarding Gift Restrictions when the Funds will be used to Provide “Official” Transportation for State Officers or Employees</i>
02-05	Retired	<i>Use of State Facilities to Gamble</i>
03-04	Revised	<i>Selling Textbooks Sent to Faculty for Evaluation or Review</i>
03-05	Retired	<i>Holding an Interest, Beneficial or Otherwise, in a Person Regulated by a Citizen Body Whose Members May be Selected from Identified Groups or Interests</i>
03-06	Reissue in new AO format	<i>Application of the Ethics in Public Service Act’s Financial Interests Provisions to Non-Federal Grants</i>

Reviewed and to be retired when new FAQs are published:

96-01	<i>Gifts – Section 4 Employee – Payments for Educational Programs</i>
96-02	<i>Gifts – Section 4 Employee – Unsolicited Refreshments</i>
96-03	<i>De minimis Use of State Resources</i>
96-04	<i>De minimis Use of State Resources</i>
96-11	<i>De minimis Use of State Resources - Charity</i>
97-04	<i>De minimis Use of State Resources – Computers – Substitution of State Equipment for Personal Equipment</i>
00-05	<i>Compensation for Official Duties or Nonperformance; Limitations on Gifts</i>
00-09	<i>Use of State Resources – Combined Fund Drive</i>
03-01	<i>Use of State Facilities, including the Internet, to Access State Benefits</i>
03-03	<i>Use of Frequent Flyer Miles by State Officers & Employees</i>

Formal Board Advice

Throughout the year, agencies request advice from the EEB on a variety of subjects. Here are the questions posed to the EEB in 2009:

A. Can a Department of Revenue Administrative Law Judge (ALJ) can make a determination regarding the tax liability of Company #1, where the ALJ holds shares in Company #2, who has a financial and voting interest in Company #3, which owns Company #1.

Conclusion: Yes, the ALJ's ownership in Company # 2 was too attenuated for the state employee to have a conflict of interest or financial interest in the transaction, so the ALJ could make determinations regarding Company #1.

B. Can the spouse of a manager bid on a contract for the agency if the manager has supervisory responsibilities over the person managing the contract for the agency?

Conclusion: Yes, but It depends upon the actions taken by the state employee/officer supervisor to recuse themselves from selecting or administering the contract or making any discretionary decisions regarding the terms/conditions of the contract and what steps they have taken to screen themselves from day-to-day issues regarding vendor performance.

C. Does the Board have jurisdiction over gifts to an agency when a state employee or state official directly or indirectly benefits from the gift?

Conclusion:

1. The gift limits under RCW 42.52.150 do not apply to gifts to the state or its agencies even if the source of the gift to the state agency may include persons regulated by the agency or those who contract, or seek to contract, with the state agency. However, the Ethics Act has jurisdiction over state officers and employees who may be the recipients of a gift to any agency.

2. When a state officer or employee is the ultimate beneficiary of a gift initially given to a state agency, close scrutiny must be given to the circumstances surrounding the gift to determine if the recipient violated the Ethics Act. The Board will look at several factors to determine whether a state officer or employee violated the Act. These factors include:

a. Did the state officer or employee actively solicit the gift or funds from the regulated entity or the entity that seeks to acquire goods and services (“the non-state entity”), if so, how?

b. Does the state officer or employee have significant influence on decisions regarding the non-state entity?

c. Is there a pending state agency action against or regarding the non-state entity?

d. Was the gift related to, or have the appearance of intent to influence the impending agency action?

e. Does the gift broadly benefit the state agency or is narrowly tailored to benefit specific agency employees, or group of employees?

D. What type of links can a state agency provide on its official website?

Conclusion: Agencies may provide web links to contracted providers. For non-contracted entities, the Information Services Board and Department of Information Services already have guidelines regarding linking external web sites to agency web sites and the Board concluded that agencies should follow these firmly established guidelines.

E. Can a state employee or official “donate” a lunch or other type of meal with them or time with them to an outside organization to be auctioned off to raise money for that outside organization?

Conclusion: State employees and officials may donate a lunch with themselves as an item to auction off to raise money for a charitable organization, but they may not use state resources to purchase the meal or request reimbursement for the meal. Only de minimis use of state resources may be used to support any time spent with the state employee or official that is an auction item as well, i.e., shadowing the state officer for a day.

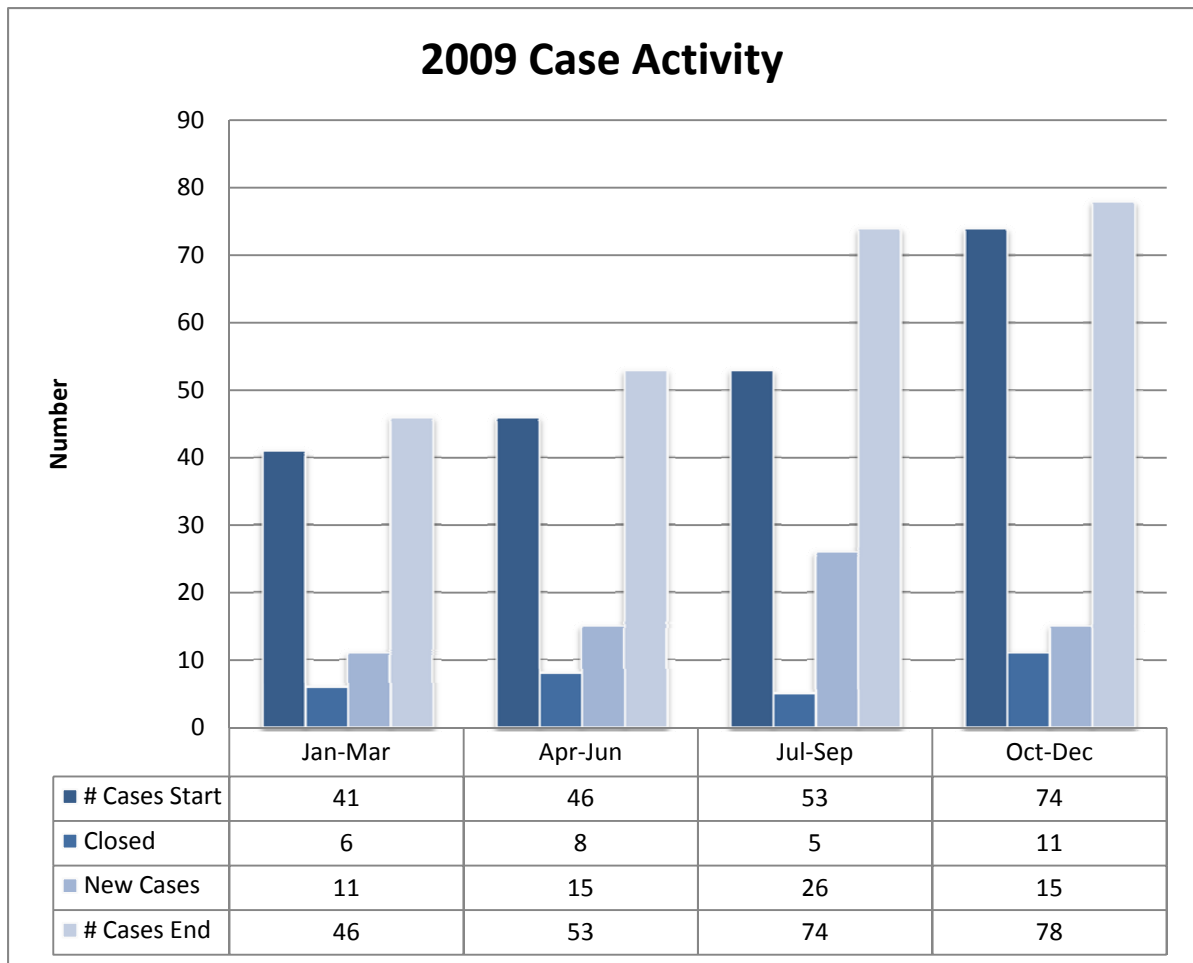
Staff Activities

Enforcement Activities

Between January 1 and December 31, 2009 the EEB opened 67 new cases.

The use of public resources for personal gain was again the leading complaint driver for EEB staff. The most common misuses were:

- visiting inappropriate internet sites;
- storing personal documents (diaries, home mortgage documents, auto details, pictures, bank account information);
- transacting personal business while at work.



The Board accepted stipulated penalties from or imposed penalties on 11 individual state employees as follows:

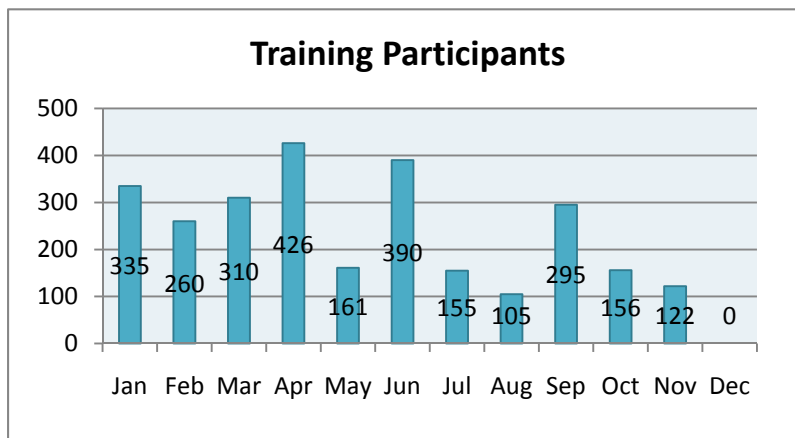
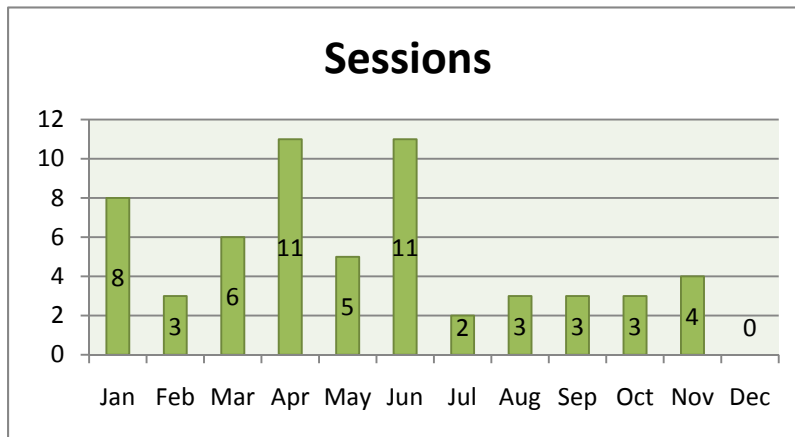
	<u>Allegation</u>	<u>Violation</u>	<u>Penalty</u>
Employee 1	Used the state computer system for personal e-mails, blogging and social networking.	RCW 42.52.160	\$500
Employee 2	Used the state computer system to access and view non-work related material.	RCW 42.52.160	\$750
Employee 3	Disclosed confidential information to persons not entitled or authorized to receive the information.	RCW 42.52.050	\$250
Employee 4	Disclosed confidential information to persons not entitled or authorized to receive the information.	RCW 42.52.050	\$250
Employee 5	Used the state computer system to access and view non-work related material.	RCW 42.52.160	\$250
Employee 6	Used the state computer system to access and view non-work related material.	RCW 42.52.160	\$6,500
Employee 7	Used state computer system for an outside business enterprise.	RCW 42.52.160	\$500
Employee 8	Former state employee became employed with prior contractor working on same transaction as when they were a state employee.	RCW 42.52.080	\$250
Employee 9	Took annual leave without filling out leave slips.	RCW 42.52.070 42.52.160	\$500
Employee 10	Used state resources to refurbish a personally owned vehicle.	RCW 42.52.160	\$1000
Employee11	Used the state computer system	RCW 42.52.160	\$6,500

to access and view non-work related material.

Training

The EEB staff continued to offer training to all agencies in a myriad of ways: a 4-hour in-depth look at the Ethics in Public Service Act, RCW 42.52; a 90-minute refresher course for those employees who already have a good working knowledge of the Act; an on-line 30-minute sessions, both interactive and non-interactive; and other sessions specifically tailored to the agency's needs.

Over the past year, the EEB Staff held 59 training sessions across the state and trained over 2690 state employees, an increase of 149% over last year. The EEB staff also presented at the Governor's orientation of new board and commissioner members and participated in a continuing legal education session for the Attorney General's Office.



Ethics Advisors Group

The Ethics Advisors Group met the week following the Board meeting to discuss Board actions. These meetings also gave the advisors a chance to seek input from others on issues that arose within their own agencies. This year this advisory group was invaluable as a sounding board for proposed Board opinions and to gather information on how individual agencies handled different ethical situations.

Human Resource (HR) Managers Group

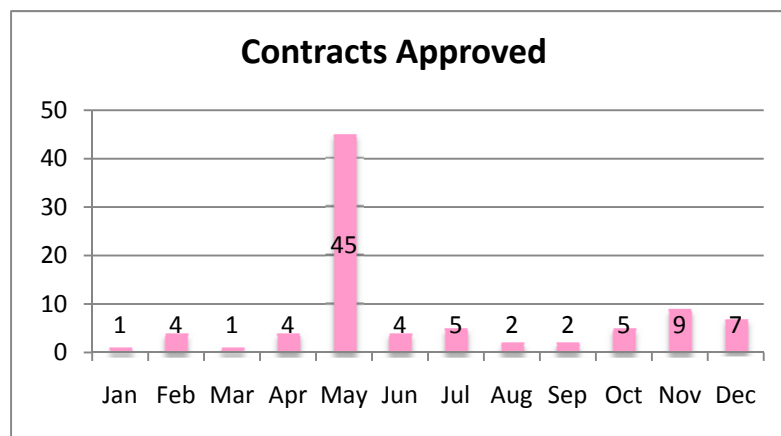
The Executive Director attended the monthly HR Managers meeting to provide information regarding ethical issues, elicit assistance regarding revisions to rules or policies and to gather input regarding training. These meetings helped disseminate information to agencies much quicker and have greatly enhanced the relationship and communication between the EEB staff and state agencies.

EEB Newsletter

The EEB Staff published an EEB Newsletter immediately following a Board meeting to inform state agencies of recent Board opinions and enforcement actions. These newsletters are posted on the ethics website for the public to read.

Outside Employment Contracts

Per WAC 292-110-060, a state officer or employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received. In 2009, the EEB Director approved 89 contracts.



Process Improvement

The EEB Staff initiated a new procedure to insure that evidence held by agencies is available to our investigators when needed. EEB Staff is also developing a process to keep complainants informed of the progress of an investigation.

Rule Making

The Board amended WAC 292-110-010 to insure that all forms of technology (computers, email, internet and telephones) are treated alike and to reinforce the fact that all communications made on a state-owned device may be subject to the public records act. The amendment also clarified that public resources may not be used to support an outside business or group, including a private business or political party. However public resources may be used to support a non-profit organization if provided for by law or authorized by an agency director.

Relationship Between the Office of the Attorney General and the Executive Ethics Board

