

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

████████████████████

NO. 99-16

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between ██████████
██████████ and the EXECUTIVE ETHICS BOARD ("Board") through Richard A. McCartan,
Assistant Attorney General.

A. FACTS AND LAW

1. **FACTS**

- a. ██████████ is a Social Worker III for the Department of Social and Health Services (DSHS). In 1996 he was the social worker assigned to Leon Pfanenstiel and his family.
- b. In August 1996 Mr. Pfanenstiel submitted to ██████████ a written request for public disclosure for all DSHS records on his family. ██████████ asserts that Mr. Pfanenstiel verbally withdrew his records request approximately two weeks after making the request. Mr. Pfanenstiel denies that he did so. Thus, ██████████ never responded to the records request.
- c. In May 1997 Mr. Pfanenstiel reiterated his request for disclosure. ██████████ wrote him back in June 1997 saying that records would be released within one week with respect to children on whom Mr. Pfanenstiel's parental rights had not been terminated. ██████████ states that he believes that he delivered the records to Mr. Pfanenstiel, but Mr. Pfanenstiel states that he never received them.
- d. Mr. Pfanenstiel continued to pursue his public records request. Because, following the date of the original disclosure request, Mr. Pfanenstiel's parental rights were terminated on two of the children, ██████████ took the position that Mr. Pfanenstiel needed to submit a new

public records request in order to receive the records. [REDACTED] states that, in requiring a new request, he was acting on advice of the Attorney General's Office and his superiors at DSHS. Mr. Pfanenstiel believed he was not required to submit a new request in order to obtain the records, and refused to do so.

e. In November 1998 Mr. Pfanenstiel filed an ethics complaint alleging that [REDACTED] was "intentionally concealing" public records in violation of RCW 42.52.050(4). On February 18, 2000, the Board found reasonable cause to believe that the violation had occurred.

f. Following the finding of reasonable cause, DSHS released over 700 pages of records to Mr. Pfanenstiel without requiring him to make a new public disclosure request. DSHS has taken the position that certain of the requested records are exempt from disclosure. DSHS is withholding those documents in good faith. Mr. Pfanenstiel acknowledges that he has now received the released records, but believes that none of the records should have been withheld.

g. [REDACTED] has not been found by the Board to have committed any past violations of the ethics law.

2. APPLICABLE LAW

a. RCW 42.52.050(4) states:

No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.17 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

b. All or a portion of the records requested by Mr. Pfanenstiel were subject to disclosure under RCW 42.17.270.

B. RESOLUTION

1. [REDACTED] asserts that, as explained above, the delay in releasing the records was due to various factors. [REDACTED] denies any attempt to "intentionally conceal" records from

Mr. Pfanenstiel in violation of RCW 42.52.050(4), as he never denied the existence of records or otherwise acted in bad faith.

2. However, [REDACTED] concedes that, if the case went to hearing, the Board could find that the long delay in releasing the records amounted to an intentional concealment of the records in violation of RCW 42.52.050(4).

3. To settle this case, without admitting a violation of RCW 42.52.050(4), [REDACTED] agrees to take instruction in the requirements of the public records law, RCW 42.17. Said instruction must be approved by Board staff and must be completed not later than December 31, 2000. In addition, [REDACTED] agrees to refrain from violating RCW 42.52.050(4). [REDACTED] agrees that if in the future the Board finds him in violation of RCW 42.52.050(4) in a subsequent case, this Stipulation and Order may be taken into account in setting the amount of the appropriate penalty.

C. CONCLUSIONS OF LAW

1. Pursuant to RCW 42.52, the Executive Ethics Board has jurisdiction over [REDACTED] and the subject matter of this complaint.
2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.
3. Settlement of this matter under the terms herein is subject to WAC 292-100-090(2) which states in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

WAC 292-100-090(2).

D. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] from all further ethics proceedings under RCW 42.52 for matters arising out of the facts contained in this complaint. [REDACTED] 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 and Order.

2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Department of Social and Health Services, the State of Washington, or other third party, which are now in existence or may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order will be inadmissible for any purpose in any other proceeding involving [REDACTED] the state, and/or third parties aligned with the state.

4. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

E. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that I am aware of my right to consult with legal counsel; that I fully understand the legal significance of this Stipulation and Order; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.

[REDACTED SIGNATURE]

9-5-00
Date

Attorney for [REDACTED]

/
Date

Stipulated to and presented by:

[REDACTED SIGNATURE]
RICHARD A. McCARTAN
Assistant Attorney General

8-31-00
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;

XX *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

Delete paragraph B.3. and insert the following:

"3. To settle this case, without admitting a violation of RCW 42.52.050(4), _____ agrees to accept a letter of instruction directing him to comply with the public records law, RCW 42.17, and applicable agency regulations and policies in dealing with any future public records requests."

DATED this 8 day of September, 2000.

Cheryl L. Rohret
REV. CHERYL ROHRET, Chair

Sutapa Basu
SUTAPA BASU, Vice Chair

JANET LIM, Member

James M. Vache
JAMES VACHE, Member

Laquitta Fields
LAQUITTA FIELDS, Member

I, _____, accept do not accept (circle one) the proposed modification.

[Signature]
Respondent

9-15-00
Date

Attorney for Respondent

Date