

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 07-012

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ and Board Staff of the Washington State Executive Ethics Board (Board) through Melanie de Leon, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On October 4, 2006, the Board received a Report of Whistleblower Investigation dated September 29, 2006, from the State Auditor's Office. The report contained the SAO finding of reasonable cause to believe ██████████ had violated RCW 42.52.160, Use of persons, money, or property for private gain, by using her agency-issued cell phone and her SCAN code to make personal phone calls. On May 11, 2007, the Board initiated a complaint regarding ██████████ alleged use of state resources for personal benefit.

1.2. Board staff reviewed the working papers from the SAO investigation, and WSDOT's response to the SAO's findings.

1.3. The Board is authorized under RCW 34.05.060 to 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.

1.4. [REDACTED] understands that if Board staff proves any or all of the alleged violations 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).

1.5. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude [REDACTED] 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 set forth below.

1.6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides 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 respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. [REDACTED] 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 and Agreed Order.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.10. If the Board rejects this Stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that, if this proposed Stipulation is rejected by [REDACTED] due to modification by the Board, this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. [REDACTED] is employed as a Public Information Officer by the state Department of Transportation (WSDOT).

2.2. On October 4, 2006, the Board received a Report of Whistleblower Investigation from the State Auditor's Office. The report contained the SAO finding of reasonable cause to believe [REDACTED] had violated RCW 42.52.160, Use of persons, money, or property for private gain, by using her agency-issued cell phone and her SCAN code to make personal phone calls. On May 11, 2007, the Board initiated a complaint regarding [REDACTED] alleged use of state resources for personal benefit.

2.3. During the period May 2005 through May 2006, [REDACTED] used her state SCAN code to make 28 long-distance personal phone calls, totaling 220 minutes.

2.4. During the period February 2006 through April 2006, [REDACTED] used her state cell phone to make ten personal phone calls totaling 36 minutes. [REDACTED] reimbursed the agency \$17 for five of those calls which were made while she was on vacation in Vancouver, B.C.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

3.2. 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.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state 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.”

3.4. [REDACTED] used her state-issued cell phone and SCAN code to place personal phone calls. Based on Findings of Fact 2.2 through 2.4, [REDACTED] used state resources in violation of RCW 42.52.160.

3.5. The Board is authorized to impose sanctions for violations of 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.

II. AGGRAVATING & MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Mitigating factors include that [REDACTED] paid \$17 in restitution to the agency to reimburse the costs of five personal phone calls she made on her state-issued cell phone while she was on vacation.

III. AGREED ORDER

[REDACTED] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) of the civil penalty on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order. If Jamie

Holter fully pays the remaining amount of two hundred fifty dollars (\$250.00) and commits no further violations of chapter 42.52 RCW within three calendar years of the date this order is accepted by the Board, [REDACTED] will have fully satisfied her civil penalty obligations with regard to this matter and will be released from any obligation to pay the remaining suspended two hundred fifty dollars (\$250.00) of civil penalty.

CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy,

[REDACTED]

Respondent

Stipulated to and presented by:

Melanie de Leon

Melanie de Leon Date
Executive Director

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IV. 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 13th day of June, 2008.

Judith K. Golberg
Judith K. Golberg, Chair

Evelyn P. Yenson
Evelyn P. Yenson, Member

Neil Gorrell
Neil Gorrell, Vice-Chair

Linnaea Jablonski
Linnaea Jablonski, Member

Michael F. Connelly
Michael F. Connelly, Member

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

 Respondent Date