BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of: WILLIAM HOLFORD Jr., Respondent.	NO. 01-13 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, WILLIAM HOLFORD Jr., and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director, and Assistant Attorney General ROBERT C. HARGREAVES, prosecuting attorney for Board staff. 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 April 13, 2001 the Executive Ethics Board received a complaint alleging that William Holford, a former employee of the State of Washington, Department of Retirement Systems (DRS), used personal information about state employees that he gained through his employment with DRS to contact state employees and solicit business for himself in his private capacity from them.

1.2. On July 11, 2003, upon receiving the Board staff's investigative report and recommendation, the Board made the determination that there was reasonable cause to believe that William Holford had committed one or more violations of chapter 42.52 RCW, and that the potential penalty was in excess of $500. The reasonable cause determination was based on alleged violations of RCW 42.52.050.

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. William Holford 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. William Holford recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Holford 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. William Holford waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 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.

1.7. If the Board accepts this stipulation, the Board will release and discharge William Holford from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment of the full amount of the civil penalty due and owing, and compliance with all other terms and conditions of the agreed order. Mr. Holford 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. This Stipulation and Agreed Order does not purport to settle any other claims between William Holford and the Washington State Executive Ethics Board, the State of Washington, or any 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 William Holford does not accept the Board's proposed modification(s), if any, Mr. Holford 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, Mr. Holford understands and agrees that this proposed 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. Respondent William Holford is a former employee of the Washington State Department of Retirement Systems (DRS), where he was a Deferred Compensation Program (DCP) representative. In that capacity, Mr. Holford assisted state employees with DCP investment decisions.

2.2. After Mr. Holford left state employment in July 1998, he worked with Safeco Investment Services / Shea Insurance Agency in Spokane.

2.3. Beginning in about November 2000, Mr. Holford sent letters to the residential addresses of approximately fifteen state employees whom he had previously assisted with deferred compensation decisions as part of his official state duties, and he followed up by telephonically contacting one such employee.

2.4. The letters Mr. Holford sent to the state employees stated:

> I am writing to you to reintroduce myself. You may not remember, but I was your State of Washington Deferred Compensation representative from 1991 to 1998 serving Eastern Washington. I was the one who came to your office to help make changes or sign you up for the program.
>
> I have since left the State of Washington employment to enter the private sector. I currently am a registered representative with Safeco Investment Services at the Shea Insurance Agency in Spokane. I still have the ability to provide Investments in the Mutual fund and Annuity marketplace as well as an extensive line of Life Insurance. I am still very involved with following the State of Washington's Deferred Compensation program, and can help you to monitor your progress in those investments.

> Also, the biggest benefit I can offer you is the ability to help maximize your Pension Survivor Benefits. At retirement time, you will have choices to make with your pension. If you wait until retirement to make those choices, you can lose a substantial amount of income to provide the continuation of your income to your spouse. The average employee can lose over $90,000 in income over a twenty year period. Let me show you how you can put those dollars into your pocket instead of the State of Washington's coffers.
>
> I will give you a call in a week or so to set an appointment at your convenience.

2.5. Mr. Holford used knowledge obtained through his state employment as a DCP representative to identify state employees whose investment and financial interests might indicate an interest in the services he could provide them in his private business capacity. In order to contact these state employees, Mr. Holford used residential address and home telephone number information obtained while he was employed by DRS. The information thus obtained was reflected in files Mr. Holford maintained at his place of private employment.

2.6. Mr. Holford used confidential information obtained while he was a state employee to solicit business in his private capacity from state employees after he left state employment. This information was not available to him as a private citizen and is confidential by law. State employees voluntarily provided information to Mr. Holford in his state capacity and did not expect that he would take that information with him when he left employment with the state. Nor did the state employees expect that Mr. Holford would use information gained by his state position to solicit business from them in his private capacity. Mr. Holford contacted these employees because he had specific knowledge gained through his position as their state DCP representative. This knowledge included the state employees'

participation in the deferred compensation program and knowledge of the employees' investment practices.

Section 3: CONCLUSIONS OF LAW

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

3.2. Pursuant to WAC 292-100-090, the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. Under RCW 42.52.050, unless authorized under circumstances not applicable here:

. . . .

> (2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.
>
> (3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

3.4. Under RCW 42.17.310(1), the following personal information is confidential and exempt from public disclosure:

. . . .

> (b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.
>
> . . . .
>
> (u) The residential addresses or residential telephone numbers of

> employees or volunteers of a public agency which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency.

3.5. As interpreted in EEB Advisory Opinion 01-06 (citing opinion 97-07), RCW 42.52.050 applies to post-state employment and prohibits former state officers or employees from using or disclosing confidential state information. RCW 42.52.010(6) provides that:

> "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

The confidential information at issue in this matter is the investment practices and the home addresses and telephone numbers of state employees, which is protected under RCW 42.17.310(1)(b), (u).

3.6. DRS had policies in effect in 1998 prohibiting disclosure of confidential information. Policy 124-27 (Code of Ethics/Conflict of Interest) states that confidential information is specific information that is not available to the general public if requested, and further refers to DRS policy regarding "Protection of Member File Confidentiality." Policy 124-27 further indicates that:

> Employees may not disclose confidential information gained by reason of their official position, nor may they otherwise use such information for benefit or gain for themselves or others.

DRS Policy 161-9-1, relating to public records requests, exempts from public disclosure "[c]onfidential information such as a member's address, home phone number. . . ."

3.7. Based on Findings of Fact 2.1 through 2.6, above, William Holford violated RCW 42.52.050(2) and (3), and in turn RCW 42.17.310(1) when, in his

capacity as a registered representative with Safeco Investment Services / Shea Insurance Agency in Spokane, he used personal and confidential information regarding state employees, obtained through his former state employment, to contact and solicit private business from those state employees.

3.8. 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. Aggravating factors in this case include that Mr. Holford's actions significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)), and that his conduct was motivated by financial gain (WAC 292-120-030(2)(b)). There are no mitigating factors in this matter.

Section 4: AGREED ORDER

4.1. William Holford will pay a civil penalty in the amount of one thousand five hundred dollars ($1,500.00). The Board agrees to suspend seven hundred fifty dollars ($750.00) of the civil penalty on the condition that Mr. Holford complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW for a period of five (5) years. The civil penalty amount of $750.00 is due and payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

II. CERTIFICATION / STIPULATION

I, William Holford, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

William Holford, Jr. Date
Respondent

Stipulated to and presented by:

Robert C. Hargreaves Date
WSBA No. 08761
Assistant Attorney General

Brian R. Malarky Date
Executive Director

III. 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

__X__ 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 12th day of September 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice-Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

_____

William Holford, Respondent Date