

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

ARDEN GRAY,

Respondent.

No. 10-014

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ARDEN GRAY, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 November 9, 2009, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Arden Gray, a Finance/Budget Coordinator for Washington State University, may have violated state law when she used her state computer for personal benefit, including taking her state laptop home in the evenings to use it for purely personal Internet access. The Board reviewed this referral and issued a complaint on January 13, 2010.

1.2. 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.

1.3. Arden Gray 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).

1.4. Arden Gray recognizes that the evidence available to the Board staff is such that the Board may conclude she 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.

1.5. Arden Gray waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Arden Gray 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. Arden Gray 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.

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

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

1.9. If the Board rejects this stipulation, or if Arden Gray does not accept the Board's proposed modification(s), if any, Arden Gray 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, Arden Gray 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. Arden Gray is a Finance/Budget Coordinator for Washington State University (WSU).

2.2. On November 9, 2009, the State Auditor's Office (SAO), issued Whistleblower Report No. 1002505, which contained a finding of reasonable cause to believe that an improper governmental action had occurred. Specifically, the SAO report cited 457 visits to shopping websites between December 2008 and February 2009 using Ms. Gray's desktop computer; a total of 2,475 non-work related records stored on Ms. Gray's desktop computer and two state laptop computers she used; and the complete absence of any files related to her work at WSU on either state laptop computer assigned to Ms. Gray over a four-year period.

2.3. Arden Gray acknowledged 550 instances of personal use of her state laptop between December 2005 and February 2009. It was her practice to take her state laptop home to use it to access the Internet through the provider she had at home. She stated that she was not aware that using state equipment on her own time at her home utilizing the Internet provider she personally paid for was an ethics violation.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Arden Gray 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.

3.4. A state officer or employee is prohibited under RCW 42.52.160 from using state resources for personal benefit.

3.5. Based on Findings of Fact 2.1 through 2.3, Arden Gray used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.7. 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.

Section 4: Aggravating and Mitigating Factors

4.1. It is an aggravating factor that the violation was continuing in nature, occurring over more than three years.

4.2. It is a mitigating factor that Arden Gray received a letter of counseling from her department chair and completed three hours of ethics training following the violations.

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