

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

JOHN HERNANDEZ

Respondent.

No. 2010-077

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, JOHN HERNANDEZ, 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 October 4, 2010, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that John Hernandez, a counselor at Spokane Falls Community College (College) did not work all of his contract hours, filed false hourly time sheets and used his state computer for personal benefit. The Board reviewed this referral and issued a complaint on March 11, 2011.

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. John Hernandez 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. John Hernandez recognizes that the evidence available to the Board staff is such that the Board may conclude he 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. John Hernandez waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or the 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 John Hernandez 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. John Hernandez 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 John Hernandez 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 John Hernandez does not accept the Board's proposed modification(s), if any, John Hernandez 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, John Hernandez 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. John Hernandez held a tenured faculty position (counselor) with the College during academic year 2009-2010. Mr. Hernandez started at the college as a part-time counselor in January 1978 and became a full-time counselor in September 1978. He has resigned his tenured position and has become reemployed with the College as a part-time hourly employee.

2.2. Mr. Hernandez's counselor contracts, calendars and timesheets from June 2008 through June 2009 were reviewed. During the academic year, Mr. Hernandez works Monday through Thursday at the College. He uses another contract that is limited to 25-days for Fridays during the academic year. When the Friday contract is exhausted, he works under an hourly contract as an evening counselor at the Institute for Extended Learning.

2.3. The SAO found overpayments that resulted from Mr. Hernandez being paid under two contracts for the same class. During the summer 2008 quarter, Mr. Hernandez was overpaid for 84.5 hours under his summer contract. Mr. Hernandez signed his 25-day contract for fall

2008. The fall quarter contract duplicated some of the September dates that had already been paid under Mr. Hernandez' summer contract. The SAO also found that Mr. Hernandez was overpaid when he submitted an hourly timesheet for 18 hours for March 13, 2009 and March 20, 2009 as he had previously been paid for these days under the 25-day contract.

2.4. The SAO estimated a overpayment for 102.5 hours for a total of \$4,122.26. Mr. Hernandez asserted that he had discussed the overpayments with his supervisor and the Human Resources Manager; however, the Human Resources Manager stated she had no communication with Mr. Hernandez regarding the overpayment issue. The supervisor indicated that he could not verify that Mr. Hernandez had made the time up.

2.5. A review of Mr. Hernandez's email on his state computer from September 4, 2007 through July 9, 2009 revealed 361 messages that did not relate to work. Specifically:

- 160 emails related to Mr. Hernandez' doctoral studies, 29 of which were sent to or received from an administrative assistant at the College who edited and formatted his papers (approximately 2 per week).
- 36 emails related to a neighborhood association (over 2 per month).
- 113 emails sent to and received from family members, friends, and colleagues (about 1 per week).
- 12 emails relating to banking and/or securing a mortgage loan (less than 1 per month).
- 41 emails from an on-line auction site, an event ticketing site, an online retailer and a professional athletic team (approximately 2 per month).

2.6. A review of Mr. Hernandez' Internet use from September 2, 2008 through July 9, 2009 found:

- 3,510 visits, mostly to his personal email account. Mr. Hernandez indicated that he gave students his home email address, home phone number and personal cell number; however, most of the visits to the Internet provider were personal (approximately 8 per day).
- 360 visits to game sites, about eight days each month and seven visits per day. Mr. Hernandez plays cribbage online during his lunch break and though it was okay to play games because he worked many hours beyond his normal schedule.
- 42 visits to four social networking sites (about twice a month).
- 59 visits to online retailers (about two a month).

- Over 21 days between September 8, 2008 and January 6, 2009, Mr. Hernandez accessed a Washington State University online education system 428 times. He did not get approval from the College to spend time working on his doctorate while at work. Mr. Hernandez' supervisor indicated that it was allowable for Mr. Hernandez to do research at work, but not to do his actual homework assignments (about 20 times per day).

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over John Hernandez 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. WAC 292-110-010 strictly prohibits the use of state resources for "any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain..."

3.6. Based on Findings of Fact 2.1 through 2.6, John Hernandez 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 Mitigating factors are that Mr. Hernandez: resigned from his tenured faculty position, issued payment-in-full of the overpayment amount determined by the SAO, and has completed Ethics and Acceptable Use of Technology training. The College is performing annual review of Mr. Hernandez's computer use and has not found evidence of inappropriate use since the SAO investigation.

4.2. It is an aggravating factor that Mr. Hernandez was aware of the overpayments and did not effectively coordinate correction of the time sheets and repayment of the overage.

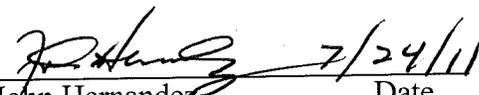
Section 5. AGREED ORDER

5.1. For the violation of RCW 42.52.160, John Hernandez will pay a civil penalty in the amount of one thousand dollars (\$1,000.00).

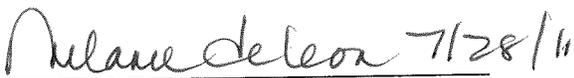
5.2. The civil penalty of \$1,000.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

CERTIFICATION

I, John Hernandez, 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.


John Hernandez 7/24/11
Respondent Date

Stipulated to and presented by:


Melanie deLeon 7/28/11
Executive Director 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

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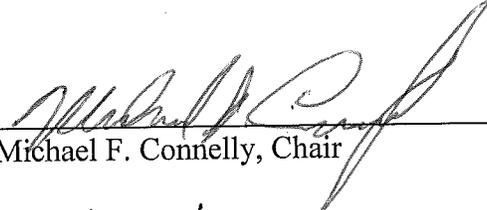
ACCEPTED in its entirety;

REJECTED in its entirety;

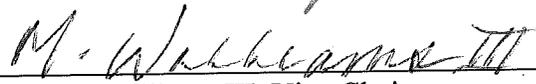
MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):

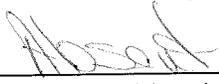
DATED this 9th day of September, 2011.



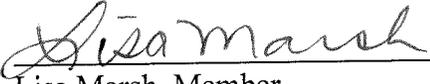
Michael F. Connelly, Chair



Matthew Williams III, Vice Chair



Linnaea Jablonski, Member



Lisa Marsh, Member

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

John Hernandez, Respondent

Date