

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Ming Zhu

Respondent.

No. 2012-013

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, MING ZHU, 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 February 7, 2012, the Executive Ethics Board (Board) received a complaint alleging that Ming Zhu, Mental Health Counselor, Department of Corrections, (DOC) may have violated the Ethics in Public Service Act by using state resources for personal gain.

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. Ming Zhu 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. Ming Zhu 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. Ming Zhu 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 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 Ming Zhu 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. Ming Zhu 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 Ming Zhu 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 Ming Zhu does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Ming Zhu waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Ming Zhu 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. Ming Zhu was a Mental Health Counselor for the Department of Corrections for all times pertinent to this investigation.

2.2. During that time Mr. Zhu was also, a full time employee of the Oregon State Department of Corrections located at a facility in Pendleton Oregon.

2.3. Mr. Zhu failed to report his outside employment with the Oregon DOC to Washington DOC as required by Washington DOC policy. Washington DOC policy stated that staff must report all outside employment and any volunteer activities that have a potential conflict of interest on DOC 03-026, "Outside Employment/Volunteer Activity".

2.4. Mr. Zhu had an annual salary of \$54,060 working for the Oregon DOC and \$46,188 for working for the Washington DOC.

2.5. The Washington State DOC provided the SAO with a copy of the iPrism® report of Mr. Zhu's computer for August 12, 2011 to September 14, 2011. Samples of the results are list below.

- 48 percent of the internet records were not work related.
- Some of the areas visited include news, videos, automotive, social networking, shopping, shareware downloads, and games.

2.6. Mr. Zhu's computer revealed that he sent/received 13 personal e-mails. These included an e-mail to a computer game helpdesk, to obtain an insurance quote for an auto, to obtain a personal tax return, and to obtain medical advice concerning a relative.

2.7. Mr. Zhu sent eight emails, including six with attachments to his Oregon DOC e-mail account between January and September of 2011. These e-mails and attachments are related to his outside employment at the Oregon DOC.

2.8. The SAO investigators also found 85 files containing non-work related content saved on the computer hard drive. These file included crossword puzzles and word search games.

2.9. *Mr. Zhu would sleep on his breaks and he would occasionally sleep past his break period. (Board modification)*

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ming Zhu 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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or 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. Based on Findings of Fact 2.5 through 2.9, Ming Zhu used state resources for personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

3.5. 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

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Ming Zhu will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend (\$1000.00) on the condition that Ming Zhu complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$1,500.00 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Ming Zhu, 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.

Zhu, Minghua 31 July 2012
MINGHUA ZHU Date
Respondent

Stipulated to and presented by:

Melanie deLeon 8/8/12
Melanie deLeon Date
Executive Director

