

# Legislative Ethics Board

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## COMPLAINT 2019 – No. 1

*In re Jenkins*  
April 1, 2019

### ORDER OF DISMISSAL: LACK OF REASONABLE CAUSE AND NO JURISDICTION

#### I. Nature of the Complaint

The complaint was received on January 28, 2019 and was the subject of Board discussions at regularly scheduled meetings on February 4, 2019 and March 25, 2019. The complaint alleges that Respondent violated RCW 42.52.020 (conflict of interest) and RCW 42.52.050 (confidentiality) when she formed an *ad hoc* group of stakeholders to review proposed legislation dealing with guardianship, refused to provide Complainant with the names of the stakeholders invited to participate in the group and sent an e mail to Complainant suggesting that she (Complainant) was disruptive in meetings and her advocacy methods were not terribly productive.

#### II. Jurisdiction

The Board has personal jurisdiction over Respondent and subject matter jurisdiction over the alleged violations of RCW 42.52.020 and .050. The Board does not have jurisdiction over the allegations relating to public disclosure.

#### III. Findings of Fact

There is reasonable cause to believe the following are the pertinent facts of the case.

1. Respondent is a member of the House of Representatives representing the 27th legislative district. She is currently the chair of the House Civil Rights & Judiciary Committee which hears legislation pertaining to guardianship issues.
2. During her tenure as a legislator, Respondent has been involved in numerous health care issues, including those involving guardianships. Respondent has worked with Complainant on numerous elder issues over the past five years.
3. Complainant has worked on guardianship issues for about 12 years. She often sends articles about guardianship issues from across the country to a wide variety of people in Washington State, including legislators, the Governor's office staff and other executive agency staff.

Occasionally, Complainant has been critical of various stakeholder groups and their roles in elder issues, particularly those issues pertaining to guardianship of the elderly.

4. During the 2018 interim, Respondent held several *ad hoc* stakeholder meetings on guardianship issues.
5. According to Respondent, Complainant was invited to all the *ad hoc* stakeholder meetings scheduled by Respondent but was notified of the meetings by separate invitation which did not include the names or e mail addresses of the other invitees.
6. According to Complainant, she attended the meetings by phone but did not speak and did not announce her attendance.
7. On October 29, 2018, Complainant sent Respondent an e mail making a public disclosure request for the names of the people attending the *ad hoc* stakeholder meetings. Complainant sent another e mail on the same date which suggested that Respondent did not care about the citizens of the state and her district, did not report political contributions to the Public Disclosure Commission and criticized the attorney stakeholders in the *ad hoc* group who were interested in guardianship issues only to get rich.
8. On November 2, 2018, Respondent answered Complainant's e mail stating that she has always reported contributions to the PDC, and that Complainant's consistent vilification of the stakeholders who want to work on guardianship issues has "dramatically slowed the progress we've been able to make in reforming our guardianship system."
9. On November 5, 2018, Samina Mays, the House Public Records Officer responded to Complainant's October 29<sup>th</sup> request and denied it because the requested records were not considered "legislative public records" under RCW 42.56.010 and RCW 40.14.100.
10. On November 20, 2018 Complainant made another public disclosure request for the "names of the people working on the various committees working to fix the state's guardianship laws" and for copies of correspondence between Respondent and a particular attorney.
11. This request was denied on November 29, 2018.

#### IV. Conclusions of Law

##### A. *Conflict of Interest (RCW 42.52.020)*

RCW 42.52.020 provides: "No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the state officer's or state employee's official duties."

Conflict of interest questions have generally followed one of two lines of analysis: per se or functional. In a per se analysis, the question is whether the conflict is so severe that the employment itself is a violation of the statute. *In re Eickmeyer*, 2006 - No. 3. In a functional analysis, the question is

whether the legislator should refrain from being involved in an issue in his or her legislative capacity. The general rule is that a legislator does not have an interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the member as a member of a business, profession, occupation or group, to a greater extent than to any other member of such business, profession, occupation or group. *In re Tim Sheldon*, 2005- No. 6.

In this matter, there are no facts indicating that Respondent's actions in holding *ad hoc* stakeholder meetings to which the Complainant was invited were in conflict with the proper discharge of her duties as a legislator. In fact, seeking stakeholder input on legislative issues is a common legislative practice. Neither the per se nor functional analysis of this conflict of interest allegation indicates that Respondent has violated RCW 42.52.020.

*B. Confidential Information – Improperly Concealed Records (RCW 42.52.050)*

RCW 42.52.050 provides in pertinent part as follows:

...

“(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.”

In her complaint, Complainant seems to argue that the names of the people on the *ad hoc* group were required to be released under RCW 42.52.050(4) and were intentionally concealed by Respondent or that Respondent was under a personal obligation to release the record and did not do so.

The names of the attendees of the *ad hoc* stakeholder meetings were not records subject to disclosure under RCW 42.56.010 or RCW 40.14.100; therefore, Respondent was under no obligation to release them to Complainant and was not improperly concealing them. As a result, there is no violation of RCW 42.52.050(4).

*C. Public Disclosure*

The jurisdiction of the Legislative Ethics Board is limited to enforcement of the Act and rules adopted under it with respect to legislators and legislative branch employees. RCW 42.52.320. The allegations related to the denial of public disclosure requests do not present an issue subject to enforcement by the Board. *See In re Doumit*, 2003 – No. 4; *In re West*, 2003 – No. 3.

V. Summary

A. There is no reasonable cause to believe that forming an *ad hoc* group of stakeholders to review proposed legislation or suggesting that Complainant was disruptive in meetings constituted a violation of RCW 42.52.020.

B. There is no reasonable cause to believe that Respondent's actions in not providing Complainant with the names of the other persons invited to the *ad hoc* stakeholder group constituted a violation of RCW 42.52.050.

C. The Ethics Act does not confer jurisdiction upon the Board to adjudicate a claim under the Public Disclosure Act.

VI. ORDER

IT IS HEREBY ORDERED that Complaint 2019 – No. 1 is dismissed.

  
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Eugene Green, Chair

Date: 4-1-2019