

Legislative Ethics Board

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COMPLAINT 2023 – No. 5

In re Simmons
July 25, 2023

REASONABLE CAUSE FINDING AND STIPULATION

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.130 prohibiting the acceptance of an honorarium by accepting money from Vanderbilt University to appear as a panelist in a conversation titled, "The Intersection of Incarceration and Addiction: A Conversation for Women Touched by Addiction."

II. JURISDICTION

The Board has personal and subject matter jurisdiction.

III. PROCEDURAL HISTORY

Complaint 2023 – No. 5 was received on March 16, 2022 and discussed at the Board's regularly scheduled meetings on May 19, 2023 and June 12, 2023.

IV. FINDINGS OF FACT

A. Background Information

1. Respondent is a member of the state House of Representatives representing the 23rd legislative district. She was first elected in 2020 and re-elected in 2022.
2. Respondent struggled with addiction for years and her adult history includes a 2001 conviction for second degree assault and five 2011 convictions for organized retail theft, unlawful possession of a firearm, and possession of controlled substances.
3. As a result of her criminal convictions, Simmons' nursing license was placed on probationary status, she served a total of over three years in jail and prison, and she underwent two bankruptcies and a foreclosure of her home.
4. After serving 20 months, she was released from prison in 2013. She participated in substance abuse counseling during her time in prison and has been sober since 2011. Although trained and educated as a nurse, she could not find a job because of her criminal record.

5. In 2014, Respondent was admitted to Seattle University School of Law from which she graduated magna cum laude as a dean's medal recipient in May 2017. She was the first student in Seattle University history to be awarded a 2-year public interest fellowship from the Skadden Foundation.
6. As part of the application to sit for the bar exam, the Washington State Bar Association must certify an applicant's moral character. After a hearing on the issue of Respondent's moral character, the Board denied Respondent's application to sit for the bar by a vote of 6 to 3.
7. Respondent appealed the Board's decision to the Washington Supreme Court. On April 5, 2018, the same day on which Respondent's appeal was argued, the Supreme Court issued its opinion unanimously overruling the Board's decision and permitting Respondent to sit for the bar.
8. She sat for the bar in 2018 and was sworn in on June 16, 2018.
9. Her story of redemption, second chances and breaking the pattern of abuse and addiction within her family was chronicled by NPR's "Invisibilia."
10. Respondent is also the first person with a felony conviction elected to the legislature.
11. Since she was elected to the House of Representatives, Respondent has sought ethics advice from Board Counsel no less than 15 times from 2020 through 2022.
12. Respondent was aware of the ethical rules to determine when she could accept an honorarium and believed that she was permitted to accept an invitation from a friend through her personal email as the request was to speak primarily about her lived experiences with an organization that does not engage in Washington state lobbying. She believes she made a mistake and did not understand that she could not speak at all about her role in the legislature.
13. Respondent appropriately disclosed the honorarium payment on her annual F-1 form with the Public Disclosure Commission.

B. Panelist Facts

14. On June 14, 2021, 6 months after she was sworn in as a legislator, Respondent received an invitation in her personal email from Piper Kerman to participate in a panel discussion sponsored by the Center for Addiction Research at Vanderbilt University about her lived experiences. Respondent has known Piper Kerman since 2016. They are members of the National Council of Incarcerated and Formerly Incarcerated Women and Girls and meet annually at the organization's conference.
15. The content of the invitation for this panel provided as follows: Vanderbilt's Center for Addiction Research (VCAR) is interested in recording a conversation between you, the president of Mending Hearts, and a faculty member in VC4R discussing the intersection of incarceration/reentry and addiction, its impact on women, how the US criminalizes addiction, the need to destigmatize addiction and treat it as a mental health issue rather than a crime, and biomedical research about addiction and biological sex differences with addiction (i.e. are women more susceptible to addiction?).
16. On June 18, 2021, the Vanderbilt School of Medicine Basic Sciences' Center for Addiction Research hosted a conversation about the intersection of incarceration, societal reentry and addiction and their impact on women. There were five panelists and the conversation was broadcast on YouTube starting on July 23, 2021.

17. The panel discussion was held virtually because of the ongoing COVID pandemic.
18. The five panelists were listed as follows: Piper Kerman, author of the memoir *Orange is the New Black: My Year in a Women 's Prison*; Tarra Simmons, Democratic member of the Washington State House of Representatives and executive director of the Civil Survival Project; Katrina Frierson, president and CEO of Mending Hearts (local non-profit agency in Nashville, Tennessee); Erin Calipari, Assistant Professor of Pharmacology at Vanderbilt University and Danny Winder, director of the Vanderbilt University Center for Addiction Research.
19. In the advertisement to the panel presentation on the Vanderbilt University website, Respondent is listed as one of the speakers and this language follows her name: Tarra Simmons, Democratic member of the Washington State House of Representatives and executive director of the Civil Survival Project.
20. During her remarks, there was an occasional banner below her picture which stated as follows: Rep. Tarra Simmons, J.D., Democratic member of the Washington State House of Representatives and executive director of the Civil Survival Project.
21. The following are the remarks made by Respondent during this conversation:

My name is Tarra Simmons and I am a formerly incarcerated mother of two sons. I am a woman in long-term recovery from substance abuse disorder. I've been out of prison for 8 years now. Prior to my conviction, I came from generations where every single person in my family has suffered with substance abuse disorder and has been incarcerated and I've been out 8 years now but prior to that I was a registered nurse and today I am an attorney and I am also a state representative in Washington. We just finished a huge drug policy this last session and I'm excited to share with you our move to decriminalize substance use disorder and drug possession and to provide a more therapeutic and humane approach to this issue.

When I was released from prison 8 years ago, I was released with drug charges on my record and an active RN license but nobody would give me a job because of my criminal history and so really I went to law school and started this career in law and politics because of my friends in recovery. I went to recovery meetings for the first time in my life and found out that I wasn 't alone and there were so many other people struggling with these systemic barriers in relation to housing and employment and paying of your court fines and fees and trying to get your children back and just trying to provide for your family after you know having a criminal record. So you know when we criminalize substance abuse disorder and mental health challenges and things like that, our drug policies have really led to this system where then it is almost impossible after you do the work and you find a healthy life and a support system for decades afterwards it's still very hard to get out of poverty and so all these policies really affect people especially women. When you 're trying to you know reunify with your children and provide for them and that's what really led to my career and so the stigma of the criminal record related to a health condition is really what I'm trying to change.

I would also like to point out that tomorrow is Juneteenth and here in Washington state you know we passed a bill this session to make that a holiday and you know in my mind when I think about the war on drugs I really think about racism and how it was intentionally done to really control the black members of our state and our communities and continue to create a system of you know free labor and feed into the prison industrial complex and so we can 't you know lose sight of that either and that you know black women face even additional barriers to recover and so many other complex issues but you know we are making some progress I will say on all of these intersecting issues here in Washington for example our

state Supreme Court on February 25th of this year struck down our felony drug possession statute and said that it was unconstitutional because it was a strict liability crime and so in the legislature we had an opportunity, an opening to look at decriminalizing drug possession which in itself is not causing harm to anybody else. It is you know an indicia of substance use disorder and so we did end up passing a bill. It's only in effect for 2 years — we took our drug possession statute from a felony which carries up to 5 years in prison down to a misdemeanor which carries up to 90 days in jail but before a person can even be charged with that misdemeanor they have to have 2 diversions from law enforcement to a navigator and attempted to get into services and so we 're really bringing our services and connection to and help upstream even further. But you can see across America we have you know created drug courts and other kinds of alternatives and so progress is really slow. 50 years of suffering and you know harming a vulnerable population who really are traumatized people and we have been traumatizing them more. 50 years is a very long time and it's frustrating for me in my position now as a legislator because I want the change to happen much more quickly but not everybody agrees and so that's why we still had to have this misdemeanor on the books for the next 2 years and then it will sunset and hopefully we are going to get full decriminalization in Washington state. Right now one thing I am happy about is that we invested 85 million dollars in substance use disorder in Washington state and we 're building the infrastructure to create the alternative and no longer will people have to be jailed and arrested and incarcerated in order to get help and so we are making progress but it is slow and you know other places across the country haven 't even come this far yet so there 's still a lot of work to do.

I will definitely say I find myself oftentimes thinking about the patriarchy and the pressure that is on me as a mother and a woman to kind of take care of everybody around me and you know I intentionally think through these things constantly and have found my voice. I ran for election to the state legislature on my story so I am purposefully using every opportunity I can to illuminate these issues for people who might not have ever experienced incarceration in their family or know people that have been incarcerated. Most people though do know somebody that suffers with substance abuse disorder. I mean this is but the problem is that we don 't talk about it enough. We are conditioned in the world to hold these things in silence because there 's so much stigma and so I intentionally every single day combat this. Right now I am suffering with a behavioral health issue in my own family and you know I had to think about that as an elected official. I can tell you that my colleagues are definitely not talking about their personal family behavioral health issues on social media. Well I do because I am here to smash all of this stigma and the patriarchy and also call out you know that women should not have to carry so much as far as running your household and taking care of everybody you know. We need help too and just being real and authentic I actually think has been really helpful. I mean I won my election overwhelmingly and I have a lot of support in my community and in the state and in the nation and I think it's because I am really bringing real lived experience to these spaces everywhere and when I feel afraid or I feel like oh maybe I shouldn't talk about this then I really take some time and I'm like no maybe I really should maybe that's I'm here and so yeah I kind of have a different approach.

You know in my day job I'm the director and co-founder of a non-profit organization of you know led by and for people that have been incarcerated and you know almost all of us have suffered with substance use disorder and so really you know sharing our stories, sharing the stories of our children and how all of these policies of criminalization have impacted our children. You know like today I think one thing people are just you know astonished by the fact that I am an attorney. I had to fight to the state supreme court to become an attorney and I won through a unanimous same day decision after the bar association denied me. I'm a state representative but I can 't go on a field trip with my kids right because I am because of punitive policies that keep us out and you know by sharing our stories we definitely have made a lot of progress across Washington and the general public 's eyes I will say you know talking to lawmakers is sometimes different and we have to really be strategic on that and you know find out who influences each you know kind of lawmaker to change policy. But you know getting the general public and recognizing that this issue affects all different kinds of families right and the more you know with the opioid use disorder and the opioid epidemic and that impacting you know families of higher socioeconomic statuses

and you know we have continued to move forward and forge new alliances on really getting to undo these harmful policies. But I think it really is about sharing stories and trying to connect with as many people as you can on a human level and we are finding some success in that.

22. Respondent was paid \$1000 by Vanderbilt University to participate on this panel of speakers. The two other panelists with lived experience were also paid \$1000 to participate on the panel. According to Respondent, it is now a common expectation to pay people with lived experience to attend meetings and share their stories.
23. Pursuant to the PDC website, Vanderbilt University has not lobbied in Washington state in the past.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.130 provides as follows:

- (1) *No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.*
- (2) *An agency may not permit honoraria under the following circumstances:*
 - (a) *The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the employer of the state officer or state employee, and the officer or employee is in a position to participate in the terms or the award of the contract or grant;*
 - (b) *The person offering the honorarium is regulated by the employer of the state officer or state employee and the officer or employee is in a position to participate in the regulation; or*
 - (c) *The person offering the honorarium (i) is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) the officer or employee may participate in the enactment or adoption.*

"Honorarium" is defined as "money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role." RCW 42.52.010 (13).

Although honoraria are restricted by statute, the Board has stated that the statute is not a complete ban on honoraria. "The prohibition is only against honoraria offered in connection with an officer's or employee's official role." *Advisory Opinion* 1998 — No. 4, pg. 1. The statute provides that the prohibition on honoraria can be significantly changed by adopting legislative rules. Since the legislature has not adopted such rules, the Board will strictly construe the statute. *Id.* at 2.

According to the Board, the existence of a separate provision specifically for honoraria implies that the application is broader than the general prohibition on receiving compensation or gratuities for performing official duties. *See* RCW 42.52.110. The context of the provision prohibiting "honoraria" and "compensation for official duties" suggests that the term "official role" covers a wider range of legislator activity than "official duty." *Id.* Therefore, by using the term "official role" in the statute and by setting out a specific additional prohibition on compensation in RCW 42.52.110, RCW 42.52.130 is intended to cover all aspects of activity related to the position of state legislator. *Id.*

The Board has also held that speaking on any legislative matter is closely related to the role of being a legislator and would always invoke the statutory prohibition. To be outside the official role, the substance of the speech would need to be a strictly personal matter unrelated to legislative action. In *Advisory Opinion* 1998 — No. 4, the Board provided the following example of a speech on a personal matter: a legislator fly fisherman speaking on casting techniques to a fishing club.

In determining whether a speech is on a personal topic rather than a legislative one, the Board presumes that all invitations are issued to the member in an official role. *Id.* at 3. This interpretation was taken from former

Legislative Joint Rule I(a)(3): "A legislator shall not accept an honorarium if it can be reasonably concluded that the honorarium would not have been made but for the legislator's status as a legislator." The burden is on the legislator to show that the invitation came to him or her in a personal capacity; that the topic is not related to legislation; and that the organization is not active in the legislative arena. *Advisory Opinion* 1998 —No. 4, pg. 3.

Since the Board has not had the opportunity to comment on the honoraria prohibition since 1998, it takes this opportunity to add some clarifying guidance for future reference. The Board believes the test laid out in *Advisory Opinion* 1998 — No. 4 - that the invitation comes to a legislator in a personal capacity; that the topic about which the legislator is asked to speak is not related to legislation; and that the organization is not active in the legislative arena - is an appropriate test.

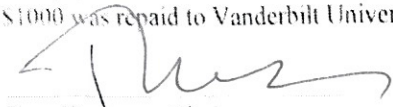
The part of the test that requires a showing that the invitation came to the legislator in his or her personal capacity means that the legislator has been invited not as a legislator but as a person. If the invitation was sent to a legislator's personal email or home address, that is one factor showing that the legislator was invited in a personal capacity. This fact alone, however, is insufficient to prove the legislator was invited in a personal capacity. The topic on which the legislator is asked to speak should be one in which the legislator is interested, involved and knowledgeable in his or her personal life. If the topic is related to legislation or legislative issues, whether or not the legislator is interested in it in his or her personal life, the Board will presume the legislator has been invited in his or her legislative capacity.

Even if the legislator is invited in his or her personal capacity and the topic about which he or she is asked to speak is not legislative in nature, the topic can become legislative in nature if the legislator raises it in some fashion. In this matter, Respondent was invited to be on this panel to speak about her lived experience. In doing so, she mentioned that she was an elected state legislator, that the legislature had recently passed legislation decriminalizing drug possession, that she ran for office on her lived experience, and that, as a legislator, she was frustrated that change does not happen more rapidly. Even assuming that Respondent was invited in her personal capacity, she converted a topic that could have remained personal into one that became legislative. As a result, Respondent, by accepting \$1000 to participate on this panel, violated the prohibition against accepting honoraria.

The Board would be remiss if it did not clarify that legislators may speak about any legislative topics they wish; they just cannot accept money for doing so.

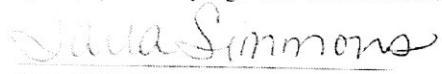
VI. ORDER AND STIPULATION

IT IS HEREBY ORDERED: that reasonable cause exists that Rep. Simmons violated RCW 42.52.130 and that she pay a civil fine of \$250. She is further ordered to repay Vanderbilt University the \$1000 honorarium she was paid. This payment to Vanderbilt University shall occur within 60 days of the date of this opinion. Upon proof that the \$1000 was repaid to Vanderbilt University, the \$250 penalty is suspended.


Tom Hoemann, Chair

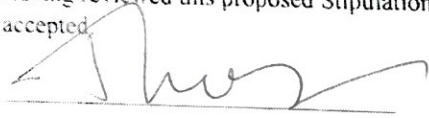
Date: 7/28/23

I, Tarra Simmons, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the opinion of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.


Rep. Tarra Simmons

Date: 7/24/23

Having reviewed this proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.


Tom Hoemann, Chair