

Legislative Ethics Board

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COMPLAINT 2024 – No. 2

In re Chang

June ~~May~~ 4, 2024

REASONABLE CAUSE FINDING AND STIPULATION

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated the Ethics Act by using her position as a legislative assistant to further her husband's discrimination complaint with the Department of Labor & Industries (L&I). Although the complaint does not cite a specific provision of the Act to have been violated by Respondent, the Board has analyzed the complaint as alleging a violation of RCW 42.52.070 (special privileges) and RCW 42.52.160 (use of public resources for private gain).

II. PROCEDURAL HISTORY

Complaint 2024 – No. 2 was received on February 8, 2024. The complaint was discussed at the Board's regularly scheduled meeting on April 22, 2024.

III. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320.

IV. FINDINGS OF FACT

A. Introduction

1. Respondent is currently the legislative assistant liaison for the Senate Democratic Caucus. At the time of the actions complained of in this complaint, Respondent was the Legislative Assistant to Senator Rebecca Saldaña.
2. Complainant is the owner, with her husband, of Amro Nurseries, a wholesale plant nursery in Shelton, Washington.
3. Respondent's husband was employed by Amro Nurseries until January 21, 2022 when he was terminated.
4. Both Complainant and Respondent reside in Shelton, Washington.

B. L&I Claims Filed by Respondent's Husband

5. On January 25, 2022, Respondent's husband filed a Worker's Rights Complaint Form (#1576770) with L&I alleging retaliation and claiming that he was fired after presenting his boss (Complainant's husband) with a list of COVID-related concerns and requests.
6. On February 4, 2022, Respondent's husband filed a wage complaint (#157918) with L&I alleging that he had not received his final paycheck from Amro Nurseries.
7. On February 8, 2022, Respondent's husband was informed that both the complaints (#1576770 and #157918) were being closed as the first complaint should have been filed with DOSH and the second complaint was without merit because he had received his final paycheck. At that time, Respondent's husband was provided with a Division of Safety and Health (DOSH) complaint form.
8. Although Respondent's husband had 13 days within which to file the DOSH complaint and meet the timeline he did not file the complaint until February 28, 2022.
9. On March 7, 2022, Respondent's husband received a letter from Anne Springer, L&I DOSH supervisor, denying his DOSH complaint because it was not timely filed. The deadline to file was 30 days from the date of the action complained of which was January 21, 2022.
10. On March 10, 2022, Respondent's husband spoke to Anne Springer and complained about the dismissal of his complaint for being untimely. Ms. Springer explained that the action complained of occurred on January 21, 2022 and he filed the DOSH complaint on February 28, 2022 which was beyond the 30 day timeline. Respondent's husband indicated that he was unaware of the 30 day timeline and Ms. Springer explained that the timeline was printed on the DOSH complaint form.

C. Discussion with Respondent

11. Respondent worked for Sen. Saldaña for two years and they would occasionally talk about their personal lives.
12. Respondent spoke with the Senator about the complaints filed with L&I by her husband.
13. Sen. Saldaña, after hearing about Respondent's husband's case, asked Respondent to look into the timeline as she thought it was too short.
14. Respondent stated she felt OK reaching out to L&I about her husband's case because the Senator had asked her to.
15. Respondent indicated that she included Sen. Sheldon's LA on the email to Ms. Fellin as she was aware her husband did not reside in Sen. Saldaña's district.

16. Respondent indicated that she and Sen. Saldaña had weekly meetings and she is pretty sure that she kept the Senator updated on her husband's case.

D. Discussion with Sen. Saldaña

17. Sen. Saldaña confirmed that Respondent did discuss her husband's issue with her.
18. The Senator gave Respondent permission to reach out to L&I to obtain more information about the 30-day timeline within which to file a complaint as she thought the timeline was too short. She was interested in knowing what the policy issues with the timeline were and whether legislation would be necessary to change it.
19. Sen. Saldaña wanted Respondent to reach out to L&I to determine what could be learned from this case – she knew that Respondent would use her husband's case as an example of the issue with which to demonstrate the short timeline.

E. Respondent's Involvement with L&I

20. All emails between Respondent and Tammy Fellin were sent from Respondent's legislative account. Her emails included a signature block indicating she was the legislative assistant to Sen. Saldaña.
21. On March 15, 2022, Respondent sent an email to Tammy Fellin stating that Sen. Saldaña heard some concerns about the 30-day limit for filing DOSH discrimination complaints. "This person shared that they experienced a retaliatory termination on 1/21. Sen. Saldaña would like to know that since this person took action within the 30-day time frame, if there is an option to get the person's complaint considered." Respondent included the details of her husband's complaint history in the email but not his name.
22. On March 15, 2022, at 5:01 pm, Ms. Fellin forwarded Respondent's email to three people who worked in the DOSH program area in L&I regarding Respondent's email. In the email, Ms. Fellin asked the following question: "is it possible to consider the date the original complaint was submitted to L&I as the received date even though it was not in DOSH?" She also asked whether DOSH was aware of the first complaint being filed.
23. On March 15, 2022, at 5:17 pm one of the people Ms. Fellin emailed responded that she was unaware of this complaint but that she would check with another staff person in the wage and hour division to find out if she notified DOSH.
24. On March 15, 2022, at 7:27 pm, a second person Ms. Fellin emailed responded that this was the first he was hearing about this complaint and had no clue what may have happened. He stated that he would defer to Anne Springer.
25. On March 16, 2022, Anne Springer emailed Ms. Fellin to ask her if she had the name of the complainant so she could pull the case file and verify the information. Ms. Springer further stated that if she was not aware of the original contact with L&I by the Respondent's husband she

“would only be able to go on the date that the complaint was received in my program [DOSH] and if it was past the 30 days filing time it would be screened out as untimely.”

26. On March 16, 2022, Ms. Fellin emailed Respondent asking for information identifying the “person” about whose case Respondent contacted L&I so they could look into it.
27. On March 16, 2022, Respondent emailed Ms. Fellin with her husband’s name, the dates he filed the complaints and the corresponding case file numbers. Respondent did not reveal that the information related to her husband’s case with L&I.
28. On March 16, 2022, Ms. Fellin emailed the information she received from Respondent to Anne Springer.
29. On March 17, 2022, Ms. Springer sent an internal email to the person who had been assigned to Respondent’s husband’s first claim asking for the file and notes.
30. On March 21, 2022, Ms. Springer sent Respondent’s husband a letter indicating that based upon the equitable tolling grounds, the 30-day time period had been tolled and the case assigned for investigation.
31. On March 22, 2022, Ms. Fellin emailed Ms. Springer asking for an update on Respondent’s husband’s case. That same day, Ms. Springer responded and stated that they re-reviewed the complaint and had tolled the filing time and assigned it out for investigation.
32. On March 22, 2022, Ms. Fellin emailed Respondent that the case had been re-reviewed and the time limit tolled. As a result, the DOSH complaint was being investigated. She also stated in this email, “By you reaching out, we were able to consider the initial complaint as the date it was submitted. So our Safety and Health staff have tolled the filing time and assigned it out for investigation.”
33. There were no further emails between Respondent and Ms. Fellin regarding the timeline policy issues that were allegedly the reason Respondent originally contacted Ms. Fellin.
34. On May 23, 2022, Respondent’s husband received written notice that the DOSH investigation was completed and the complaint dismissed as his complaint was found to be without merit.

F. Legislation Regarding the DOSH Timeline

35. During the 2021 legislative session, ESHB 1097 was introduced. This bill, among other things, made changes to the Washington Industrial Safety and Health Act’s anti-retaliation provisions, including increasing the timeline for filing DOSH complaints from 30 to 90 days.
36. The effective date for the increase to the DOSH complaint timeline filing was July 1, 2022.
37. This bill went through the Senate Labor, Commerce and Tribal Affairs Committee of which Sen. Saldaña was a member.

IV. ANALYSIS AND CONCLUSIONS OF LAW

A. RCW 42.52.160 – Private Gain

RCW 42.52.160(1) prohibits a state officer or state employee¹ from using any person, money, or property (known in the opinions as public resources) under his or her official control or direction, or in his or her official custody, for the private benefit or gain of the officer or another unless that use is part of a state employee's official duties. *See also In re Higginbotham, 2005 – No. 1.*

Many legislative assistants perform case work duties on behalf of constituents who reside in the legislator's district and have an issue with a public agency for which they are seeking a legislator's assistance. Senator Saldaña represents the 37th legislative district while Respondent's husband resides in the 35th legislative district. Although Respondent did include the legislative assistant for the 35th legislative district in her emails to Ms. Fellin, Respondent was the primary person making and responding to contacts from L&I.

Based upon her prior casework experience with Ms. Fellin, it is likely Respondent knew she could be more successful getting L&I to accept her husband's complaint than going through the channels that someone without her connections would have to. Sen. Saldaña, as a member of the Senate Labor Committee would have worked on L&I issues frequently. As such, Respondent would have had significant contact with Ms. Fellin on other issues.

Although Respondent claims to have initiated the contact with Ms. Fellin for policy reasons, the first email she sent to Ms. Fellin concluded by asking "if there is an option to get this person's complaint considered." Subsequent emails between Ms. Fellin and Respondent were solely about Respondent's husband's L&I complaint against Complainant's business. After the first email, policy issues are never again discussed.

Respondent contacted Ms. Fellin several times on behalf of husband using legislative resources. Although she identified her husband by name, she did not indicate that he was her husband and L&I personnel would not have known this fact because she and her husband have different last names. Because Respondent is a legislative assistant allegedly calling on behalf of someone seeking Sen. Saldaña's assistance, her contacts with L&I would have been elevated in response. From her previous work with L&I, it is likely that Respondent knew or should have known this. Respondent's actions constitute a violation of RCW 42.52.160. *In re Harmon, 2023 – No. 16.*

The fact that the Senator approved Respondent contacting L&I about this case does not absolve Respondent from following the Ethics Act. The provisions of the Ethics Act apply to every legislator and legislative staff person, and each is independently responsible for following the provisions of the Act.

B. Special Privileges

RCW 42.52.070 is violated when a legislator or legislative staff uses his or her position to secure special privileges or exceptions for himself, herself, his or her spouse, child, parent or another. The statute

¹ "State employee" means an individual who is employed by an agency in any branch of government. RCW 42.52.010(18).

is not violated if the legislator or legislative staff is performing duties within his or her scope of employment. *In re Hankins*, 2007 – No. 1B.

As stated in the previous section of this report, conducting casework on behalf of a constituent is within the scope of a legislative assistant's employment. However, conducting casework on behalf of a family member whether or not they are a constituent is not within the scope of a legislative assistant's employment. To do so using one's legislative title while indicating that the casework is being done on behalf of the legislator for whom the legislative assistant works is a violation of the special privileges prohibition and what RCW 42.52.070 was designed to prevent. *In re Harmon*, 2023 – No. 16.

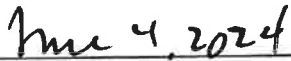
V. ORDER AND STIPULATION

IT IS HEREBY ORDERED: that reasonable cause exists that Coco Chang violated RCW 42.52.070 and .160 and that she pay a civil penalty in the amount of five hundred dollars (\$500) payable to the Washington State Treasurer; provided, however, that two hundred and fifty dollars (\$250) of this penalty be suspended, with such suspension conditioned upon Ms. Chang's having no further violations of RCW 42.52 through October of 2028.

IT IS FURTHER ORDERED: that Respondent receive refresher ethics training provided by Board Counsel no later than May 31, 2024.



Tom Hoemann, Chair



Date

I, Coco Chang, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option 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.


Coco Chang

Date

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



Tom Hoemann, Chair