

## **REPORT OF WHISTLEBLOWER INVESTIGATION**

### **SENTENCING GUIDELINES COMMISSION NO. 00-052 SEPTEMBER 20, 2000**

The Sentencing Guidelines Commission referred the issues contained in this report to the State Auditor's Office for investigation. Our Office conducted the investigation under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated these assertions independently, objectively and thoroughly through interviews and observations.

We attribute the conditions disclosed during our investigation to be the result of a general lack of policies and procedures and a lack of awareness of the state's ethics code. The Commission has proactively initiated actions to establish policies and procedures and to provide training in response to the recommendations contained in this report.

This is the result of our investigation.

#### **Assertion 1:**

**The Executive Director of the Sentencing Guidelines Commission is using a state-owned cellular telephone and the State Controlled Area Network (SCAN) to make personal telephone calls.**

We have determined there is reasonable cause to believe there has been a violation of state law.

We reviewed the Commission's cellular telephone and SCAN records and found that the Executive Director used:

- A state-owned cellular phone to make 16 personal telephone calls to his residence during the period December 24, 1998 through September 21, 1999. These telephone calls lasted a total of 36 minutes at a cost of \$9.42. State regulation allows an employee to make personal calls of a short duration to family members while in travel status. However, we found no evidence the Executive Director was in travel status at the time of these calls. Thus, we have determined that these calls were personal use of state resources.
- The SCAN long-distance telephone system to make 21 personal telephone calls during the period August 1, 1998 through October 31, 1999. These calls lasted a total of 606 minutes at a cost of \$42.23. As an example, some of the calls were made to: a "Bootery" in Texas; the person renting the Executive Director's personal residence in Washington, D.C.; a car repair establishment in Kirkland; and various other calls of a personal nature. Thus, we have determined that all of these calls were a personal use of state resources.

The Executive Director resigned from the Sentencing Guidelines Commission prior to the issuance of this report.

We conclude the Executive Director violated state law by using a state-assigned cellular telephone and the SCAN telephone system to make personal telephone calls.

We recommend the former Executive Director reimburse the Commission \$51.65 for

the cost of these personal telephone calls.

We also recommend the Commission advise future executive directors of state laws and regulations regarding the use of state resources for personal purposes and ensure that they receive ethics training.

We considered the following criterion in investigating this assertion:

*"(1) State officers and state employees are obligated to conserve and protect state resources for the benefit of the public interest, rather than their private interests . . . . Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use. (2) State officers or state employees may not use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person . . . ." WAC 292-110-010 (RCW 42.52.160)*

Based on our investigation, the State Auditor's Office has reasonable cause to believe that RCW 42.52.160 and WAC 292-110-010 have been violated. Pursuant to RCW 42.40.040(10), we are referring this matter to the state Executive Ethics Board.

#### AGENCY PLAN FOR RESOLUTION

*We accept the conclusion that the former Executive Director used a state-owned cellular phone to make personal calls at a cost of \$9.62 and the SCAN system to make personal calls at the cost of \$42.33. The former Executive Director has reimbursed the cost of these calls by set off against other proper expense reimbursements. The current Executive Director and all members of the Commission staff have received training in the proper use of the state telephone system.*

#### **Assertion 2:**

**The Executive Director of the Sentencing Guidelines Commission used a state-owned computer for personal purposes.**

We have determined there is reasonable cause to believe there has been a violation of state law.

Our review of the information contained on the hard drive of the state-owned computer assigned to the Executive Director revealed that he:

- Used the Internet to review personal photographs electronically before the prints were received from the photo developer.
- Visited Internet sites related to motor vehicles, baseball and magazines.
- Sent at least one personal e-mail message.
- Prepared at least two personal documents, a letter addressed to the Committee of Senior

Fellowships at Dartmouth College and a letter and financial schedules addressed to a Certified Public Accountant in New Bedford, Massachusetts.

The hard drive of the state-owned computer assigned to the Executive Director reflected that Internet sites related to sexually explicit material also were visited. During our investigation, the Executive Director submitted a memorandum to us admitting some use of the state-owned computer for personal purposes. While acknowledging receipt of inappropriate material from one source, the Executive Director stated that he immediately eliminated these files from his computer when he discovered their content. However, he denied any knowledge of the remaining sexually explicit material recorded on his computer. He further stated that other Commission employees could have used his computer because they had access to his computer password.

We conclude the former Executive Director violated state law by using his state-owned computer to access Internet sites for personal purposes, sending a personal e-mail message and preparing personal correspondence. State law specifically prohibits the use of state-owned computers for any non-business purpose.

We recommend the Commission advise the Executive Director of state laws and regulations regarding the use of state resources for personal purposes and ensure that he receives ethics training.

We considered the following criterion in investigating this assertion:

*"(1) State officers and state employees are obligated to conserve and protect state resources for the benefit of the public interest, rather than their private interests . . . Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use. (2) State officers or state employees may not use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person . . . (5)(d) A state officer or employee may not make private use of state computers or other equipment to access computer networks or other data bases including, but not limited to, electronic mail and electronic bulletin boards for personal use unrelated to an official business purpose." WAC 292-110-010 (RCW 42.52.160)*

Based on our investigation, the State Auditor's Office has reasonable cause to believe that RCW 42.52.160 and WAC 292-110-010 have been violated. Pursuant to RCW 42.40.040(10), we are referring this matter to the state Executive Ethics Board.

#### AGENCY PLAN FOR RESOLUTION

*We accept this conclusion. The current Executive Director and all members of the*

*Commission's staff have received ethics training and instruction that personal use of state property is not permitted.*

**Assertion 3:**

**The Executive Director of the Sentencing Guidelines Commission is submitting requests for travel expenses that were not incurred.**

We have determined there is reasonable cause to believe there has been a violation of state law.

We reviewed the Executive Director's personnel records and found that his official residence was Kirkland. However, he maintained an apartment in Olympia, his official duty station. We also reviewed his Travel Expense Vouchers for the period August 1, 1998 through September 30, 1999, and determined that he requested reimbursement for unallowable travel costs. The Commission subsequently paid for these inappropriate expenses. The Executive Director was inappropriately reimbursed for:

- Mileage on at least 11 automobile trips classified as commute trips. The Executive Director improperly computed allowable mileage for trips between Olympia and the Seattle area because he misinterpreted state travel regulations when determining this information. We did not question those trips where it was evident the Executive Director traveled to the Seattle area and returned to Olympia on the same day. The amount of these unallowable costs was \$257.36.
- A meal and bus transportation expense incurred while in leave status taken in conjunction with official state travel. The amount of these unallowable costs was \$69.49.
- A meal expense when the individual was not in travel status. The amount of this unallowable cost was \$14.

The Commission was not aware of these inappropriate travel costs because the Executive Director approved his own Travel Expense Vouchers.

In addition, the Commission did not approve the Executive Director's out-of-state travel in advance, which is required by state regulation.

We conclude the Executive Director requested and received reimbursement for unallowable travel costs.

We recommend the former Executive Director reimburse the Commission \$340.85 for the cost of these inappropriate travel expenses.

We also recommend the Commission strengthen internal controls to ensure that only allowable travel expenses are reimbursed, the Executive Director's Travel Expense Vouchers are approved prior to payment, and all out-of-state travel is approved in advance.

We considered the following criteria in investigating this assertion:

*"Travelers must receive prior authorization for travel from the agency head or authorized designee . . . For all out-of-state travel." State Administrative and Accounting Manual (SAAM),*

Section 10.10.50.a

*"The following types of travel-related costs shall not be reimbursed . . . (2) The cost of the daily commute between the traveler's official station . . . and official residence . . . (3) Certain travel expenses are considered as personal and not essential to the transaction of official state business . . . Entertainment expenses . . ." SAAM, Section 10.20.20*

*"When leave of absence of any kind is taken while in a travel status, the exact hour of departure and return to the temporary duty station must be shown on the Travel Expense Voucher . . . Per diem is not to be granted for the leave of absence period nor expenses allowed for transportation to and from the post of duty." SAAM, Section 10.20.50.b*

*"Reimbursement is allowed for lodging expenses when the temporary duty station is located more than fifty (50) miles (most direct route) of the closer of either the traveler's official residence or official station." SAAM, Section 10.30.30.b*

AGENCY PLAN FOR RESOLUTION

*We concur that travel expenses of \$340.85 were not properly allowable. The former Executive Director has reimbursed these expenses by set-off against other proper travel expenses. With regard to your recommendation that the Executive Director's Travel Expense Vouchers are approved prior to payment and that all out-of-state travel is approved in advance, the Chair of the Sentencing Guidelines Commission will approve all travel expenses of the Executive Director.*

**Assertion 4:**

**The Research Director at the Sentencing Guidelines Commission has allowed a relative to use state equipment for personal purposes.**

We have determined there is reasonable cause to believe there has been a violation of state law.

Our interviews with the Research Director and Commission staff members disclosed that the Research Director brought a family member to work and allowed the individual to use state-owned equipment to play computer games during the summer of 1999.

We conclude the Research Director violated state law by allowing a family member to use a state-owned computer for personal purposes.

We recommend the Commission advise the Research Director of state laws and regulations regarding the use of state resources for personal purposes and ensure that she receives ethics training.

We considered the following criterion in investigating this assertion:

*"(1) State officers and state employees are obligated to conserve and protect state resources for the benefit of the public interest, rather than their private interests . . . Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use. (2) State officers or state employees may not use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person . . . (5)(d) A state officer or employee may not make private use of state computers or other equipment to access computer networks or other data bases including, but not limited to, electronic mail and electronic bulletin boards for personal use unrelated to an official business purpose." WAC 292-110-010 (RCW 42.52.160)*

Based on our investigation, the State Auditor's Office has reasonable cause to believe that RCW 42.52.160 and WAC 292-110-010 have been violated. Pursuant to RCW 42.40.040(10), we are referring this matter to the state Executive Ethics Board.

#### AGENCY PLAN FOR RESOLUTION

*We accept this conclusion with the caveat that the former research director ceased this usage as soon as she became aware that it was prohibited. The Commission's staff has received training on the proper use of state equipment.*

#### **Assertion 5:**

**The Executive Director of the Sentencing Guidelines Commission has taken annual leave without submitting leave requests.**

We have determined there is no reasonable cause to believe there has been a violation of state law.

Our investigation disclosed that the Executive Director's annual leave was not always recorded on Commission time and attendance records. During the period September 1, 1998 through October 31, 1999, the Executive Director was on annual leave for 17 days on seven separate occasions in which leave was not recorded. The Executive Director stated that he did not submit leave requests for these absences because he took compensatory time in exchange for extra hours he had previously worked at the Commission. However, he did not maintain official compensatory time records prior to this investigation.

We verified that the Executive Director's position is exempt from the provisions of Merit System Rules. Since the Executive Director is not legally required to report annual leave under these circumstances, we conclude there is no violation of state

law.

However, our investigation also disclosed the Commission did not have a formal compensatory time policy for its employees.

We recommend the Commission establish policies and procedures for employees who are entitled to use compensatory time.

We considered the following criteria in investigating this assertion:

*"The personnel board shall assign a specific work period designation to each job class. In deciding which work period designation is appropriate, the personnel board shall consider the following factors: (a) Whether the positions are exempt from the overtime provisions of the Fair Labor Standards Act as executive, administrative, professional, agricultural, outside sales, or recreational establishment personnel . . . (2)(d) Exceptions (e) Full-time positions which are exempt from the overtime provisions of the Fair Labor Standards Act as executive, administrative, professional, agricultural, outside sales, or recreational establishment personnel . . ."* WAC 356-15-020 (RCW 41.06.150)

#### **Assertion 6:**

**An employee at the Sentencing Guidelines Commission is being paid as a full-time employee and not being required to work the required 40 hours per week.**

We have determined there is no reasonable cause to believe there has been a violation of state law.

Our investigation disclosed that one Commission employee works flexible hours and telecommutes on a full-time basis. We interviewed Commission staff members and found no evidence to indicate that the employee did not work the 40 hours per week required for a full-time employee. While the Commission implemented a time-keeping policy and monitored the work of this employee, it did not have a formal telecommute agreement that established the supervisor's work expectations for this position at the time of our investigation. However, the Commission subsequently entered into a written telecommute agreement with this employee on January 10, 2000.

We conclude, therefore, there is no violation of state law.

We recommend the Commission establish policies and procedures for employees who telecommute.

We considered the following criteria in investigating this assertion:

*"Requirements regarding working hours shall be specified for all employees by each agency but shall not result in full-time employment being compensated for less than forty hours per*

week." WAC 356-15-085 (RCW 41.06.150)

*"A commute trip reduction program shall consist of, at a minimum . . . (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include . . . (xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes." RCW 70.94.531*

#### AUDITOR'S CONCLUDING REMARKS

We commend the Commission for bringing these issues to our Office and for initiating immediate actions to resolve the issues identified during this investigation. We will be following up on the Commission's implementation of its plan for resolution pursuant to RCW 42.40.040(10) and (11).

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Notice of Filing and Transmittal  
September 20, 2000

Attached is the official report on whistleblower case No. 00-052 at the Sentencing Guidelines Commission.

This report is transmitted by the State Auditor's Office pursuant to Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act.

Questions about this report should be directed to Joe Dervaes, Director of Special Investigations, at (360) 902-0368.

Sincerely,

**BRIAN SONNTAG, CGFM**  
STATE AUDITOR

BS:dc

cc: David Boerner, Chair, Sentencing Guidelines Commission  
Debbie O'Dell, Executive Secretary, Executive Ethics Board  
Sadie Hawkins, Assistant Director, Accounting Division, Office of Financial Management