

Legislative Ethics Board

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COMPLAINT 2023 – No. 4

In re Simmons

June 21, 2023

NO REASONABLE CAUSE - ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent's outside employment with the organization of which Respondent was a founding director, Civil Survival, creates a conflict of interest with her official duties as a legislator contrary to RCW 42.52.020 and RCW 42.52.040. The complaint also alleges that Respondent's sponsorship of bills favored by her outside employer violates RCW 42.52.020.

II. JURISDICTION

The Board has personal and subject matter jurisdiction.

III. PROCEDURAL HISTORY

Complaint 2023 – No. 4 was received on March 16, 2023 and discussed at the Board's regularly scheduled meetings on May 19, 2023 and June 12, 2023.

IV. FINDINGS OF FACT

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 founded the Civil Survival Project (CSP) in 2015. CSP organizes people in the state of Washington who have been directly impacted by the criminal justice system to build connections, gain knowledge and increase political participation.
3. The CSP was originally a project within the Public Defender Association (PDA).
4. In September 2020, prior to her election to office, Respondent met with House and Board Counsels to discuss what duties in her job as Director of the Civil Survival Project she would need to forego if she were elected to the House of Representatives.
5. Respondent indicated that the reason she was asking before she was elected was to provide her employer time to transition work to other colleagues if she was unable to continue performing that work if elected.

6. She listed her job duties as follows:

- Set the vision for the project;
- Set and manage the budget for the project;
- Development: most of the funding is from grants;
- Program administrative tasks;
- Staff management and development;
- Spokesperson for project with the media;
- Give presentations about the project's work;
- Policy and legal work;
- Oversee the programmatic development of reentry legal aid project(a new sub-project which is the bulk of Civil Survival's work);
- Attend several policy meetings including appointed positions: Statewide Reentry Council; Public Defense Advisory Board; Sentencing Task Force; Supreme Court Gender & Justice Commission
- Legislative strategy: collaborate with lobbyists and partner organizations;
- Testify on priority legislation unless can delegate to others;
- Lobby when cannot delegate to others.

7. On September 25, 2020, Board Counsel provided Respondent with a letter of informal advice on which job duties might present a conflict of interest with her official legislative duties should she be elected to office.

8. The letter of informal advice detailed the past Board opinions analyzing the outside employment of legislators. Her employment situation, at that time, was evaluated using the "functional" rather than the "per se" approach.

9. Pursuant to that approach, Board counsel advised Respondent that she could support, advocate and vote for legislation supported by the PDA as long as she was confident that the PDA was not paying her to advance their legislative agenda. The letter further advised that potential conflicts can be reduced or eliminated by restructuring outside employment duties.

10. Board counsel recommended that Respondent remove the following duties from her employment portfolio: Legislative strategy: collaborate with lobbyists and partner organizations; testify on priority legislation unless can delegate to others; and lobby when cannot delegate to others. Board counsel further recommended that Respondent examine the duty titled policy and legal work to ensure there would be no conflict with legislative duties consistent with the ethics advice provided.

11. Respondent indicated that the three items Board counsel recommended be removed from her outside employment duties were removed. She also resigned from the Statewide Reentry Council and the Sentencing Task Force.

12. On December 8, 2020, after winning election to the House of Representatives, the Director of the PDA laid out Respondent's responsibilities as the CSP director as follows:

As of January 1, 2021, you are scheduled to maintain a 0.5 FTE at PDA while you are in session. The responsibilities allocated to this FTE will include continuing in a reduced capacity as the CSP Program Director (1.0 outside of legislative session). Your primary responsibility will be for external communications, oversight of program integrity and adherence to core values, supervision of Game Changer program, budget and fundraising. In addition, you will continue to directly supervise organizer ##### and executive assistant #####, and to provide project oversight as needed for Legal Services Director ##### with respect to the legal services aspect of RLAP, and Policy & Advocacy Director ##### as needed in regards to CSP policy advocacy that is not directed towards the state legislature.

You will not play any role whatsoever, directly or indirectly, in forming or advancing the PDA or CSP legislative advocacy agenda. PDA does not expect any form of special treatment related to your elected position.

Your responsibilities outlined above will go into effect on January 1, 2021, and will remain in place throughout your time in session. After you return to work in or about May 2021, your PDA FTE allocation will increase, but will never include state-level legislative advocacy while you are also holding a position as an elected State Representative.

13. On January 2, 2021, after attending a new legislator orientation, Respondent submitted an Employment Disclosure Form to the Board detailing her employment as the Director of the Civil Survival Project with the Public Defender Association.
14. At its meeting on March 1, 2021, the Board reviewed Respondent's disclosure form and determined there was no conflict between her employment and official duties.
15. On January 21, 2021, Respondent contacted House and Board counsels regarding her fundraising activities for her employer. She indicated that CSP mostly receives grant money from foundations but she wanted to know the parameters of fundraising. Counsels discussed the Board's holding in *Advisory Opinion 2020-No. 2* in which the Board stated that legislators cannot as part of their outside employment responsibilities ask lobbyists or lobbyist employers for donations.
16. When performing her fundraising responsibilities for CSP when it was part of the PDA and now for the current organization, Civil Survival, she has never solicited donations from lobbyists.
17. In December 2021, Respondent contacted House and Board Counsels for advice about her outside employment. It had been decided that the CSP would launch into an independent 501(c)(3) organization and no longer be a part of the PDA. The PDA was supportive of this move and Respondent was asked to be the Executive Director. She sought advice about this move because she was concerned that some of the individuals she would supervise would lobby at the state level. Respondent was advised that anyone lobbying at the state level could not be within her chain of command. As a result, it was decided that the organization would have co-Directors who would report directly to the Board of Directors and lobbying efforts would be placed under the supervision of another co-Director.
18. The new agency, called Civil Survival, launched in April 2022.
19. According to the Civil Survival website its work "promotes successful family and community reintegration for people who are being released from incarceration by removing the many

financial, political, and legal barriers to reentry. Nearly one in four people in Washington State have been involved in the criminal justice system. Civil Survival is working to improve their chances of becoming productive members of their communities by removing some of the many collateral consequences of mass incarceration.”

20. As of October 2022, Respondent’s job duties with Civil Survival were as follows:

- **Board Management**
 - *Report to and work closely with the Board of Directors to seek their involvement in organizational policy decisions, fundraising and to increase the overall visibility of the organization.*
- **Visionary Leadership**
 - *Set the vision of the organization and direct organizational strategy.*
 - *Responsible for developing organizational culture.*
 - *Maintain a calendar of work anniversaries and birthdays, acknowledging our team and bringing the fun!*
- **Development**
 - *Responsible for raising all revenue which includes management of*
 - i. *Grant proposals*
 - ii. *Grant reports*
 - iii. *Individual donations*
 - iv. *Events*
 - *Prospecting of new donors, and investing time into building or maintaining those relationships.*
- **External Relations**
 - *Serve as the Organization’s spokesperson to the organization’s constituents, the media and the general public.*
 - *Establish and maintain relationships with key individuals and organizations, and utilize those relationships to strategically enhance the Organization’s Mission.*
- **Staff Supervision**
 - *In consultation with the Board of Directors, collaborate with the Managing Director of Policy and Advocacy to conduct an annual performance evaluation of the Managing Director of Legal Services and Operations.*
 - *In consultation with the Board of Directors, collaborate with the Managing Director of Legal Services and Operations to conduct an annual performance evaluation of the Managing Director of Policy and Advocacy.*
- **Organizational Development**
 - *Partner with the Managing Director of Legal Services and Operations, Managing Director of Policy and Advocacy and Operations Manager to transfer and build out business units, including:*
 - i. *Human Resources, which includes benefits, compensation philosophy, performance evaluations, and organizational policy and procedures*
 - ii. *Finance, which includes payroll, accounting, and budgeting.*
 - iii. *Operations, which includes Information Technology infrastructure, file and knowledge management, and grant reporting and writing.*

- *Partner with the Managing Director of Legal Services and Operations, Managing Director of Policy and Advocacy, and Operations Manager to continue development of an organizational culture development plan.*
- *Partner with the Managing Director of Legal Services and Operations, Managing Director of Policy and Advocacy, and Operations Manager to evaluate staffing needs.*
- *Partner with the Managing Director of Legal Services and Operations and Managing Director of Policy and Advocacy to develop a strategy to ensure that Civil Survival recruits and trains formerly incarcerated staff and staff of color, both in management and non-management level positions.*

21. In November 2022, the Civil Survival Board of Directors decided to hire a third Co-Director to build out its systemic advocacy work to include impact litigation and policy advocacy at various levels of government including court rules, court processes and legislation.¹

22. As a result, Respondent's role in the organization became even more limited as another of the co-Directors assumed some of Respondent's HR, Finance and Operations Duties.

23. Respondent's job duties now are limited to fundraising, setting a vision, supporting the legal clinics at the prisons and forming strategic partnerships to increase access to justice. Respondent also supports the co-Directors with HR issues, onboarding and management processes when she is available.

24. The CSP Board of Directors includes no lobbyists or lobbyist employers.

25. Respondent has prime sponsored and co-sponsored bills supported by her non-legislative employer.

26. Respondent has introduced and sponsored legislation supported and opposed by her non-legislative employer because these are the areas of her lived and professional experience. If her employer or colleagues want to discuss legislation she requires they meet with her in her legislative office or via Zoom with a calendar invite on her legislative calendar.

V. ANALYSIS AND CONCLUSIONS OF LAW

A. *RCW 42.52.020 – Conflict of Interest*

The Board has frequently dealt with the issue of the outside employment of legislators. In determining this issue, the Board has analyzed it by applying two statutes: RCW 42.52.020 (activities incompatible with public duties) and RCW 42.52.330 (citizen legislator).

¹ Civil Survival also provides direct legal services to people with criminal records to assist them in overcoming barriers to employment and housing and obtaining court debt relief. Civil Survival conducts its work through partnerships with reentry organizations and it hosts mass relief days in partnership with prosecutors, defenders, judges and court professionals. The legal team is also growing its capacity in appellate work.

The concept of the citizen-legislator is based in the Washington State Constitution. Other than the civil office prohibition in Article 2, Section 14, the constitution does not limit a legislator's ability to hold outside employment. The only other written limits on legislators' non-legislative jobs arises within the Ethics Act itself through provisions like RCW 42.52.020.

The language of RCW 42.52.020 is very broad and provides as follows:

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.

The Board, in considering the application of RCW 42.52.020, must also address RCW 42.52.330 which provides as follows:

By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle.

These statutes mean that when the Board is reviewing whether a particular non-legislative job presents evidence of "activities incompatible with the member's official duties," it must consider how that provision is to be applied in light of the citizen-legislator concept.

Many legislators have non-legislative jobs during the months between legislative sessions. As a result, the Board has had an opportunity to issue several decisions analyzing a legislator's outside employment in light of the two statutory provisions cited above.

When looking at whether a non-legislative job presents a conflict of interest with the legislator's official duties, the Board has used two tests: *per se* and functional. The *per se* test looks at whether the legislator's non-legislative employment presents such a direct conflict with his or her official duties that the employment itself would violate .020. The Board has found that the following jobs presented a *per se* violation of .020:

- Executive Director of organization focusing on the development of grass roots lobbying (*Advisory Opinion* 1998 – No. 6);
- Legislator paid for lobbying the legislature on behalf of his outside employer (*Advisory Opinion* 1999 – No. 5);
- Legislator worked for college board and was paid to work with legislators on legislation (*Advisory Opinion* 95 – No. 1 - citing Senate Board of Legislative Ethics Opinion 69-1)
- Executive Director of trade organization having promotion of legislation as one of its paramount purposes (*Advisory Opinion* 95-1 – citing Senate Board of Legislative Ethics Opinion 69-3)

The functional test applies to specific legislative actions – votes – and the degree to which a particular legislator stands to gain from those votes. The process requires a review of the legislator's non-legislative

activities for his or her employer but also requires consideration of that outside employment and the extent to which the legislator will personally benefit from specific legislative action.

In one of the first complaints it decided, the Board, using the functional analysis, determined that a Senator's personal services contract with his employer did not violate .020 even though the Senator sponsored and voted for legislation supported by his outside employer. *In re Sutherland*, 1995 – No. 2. In *In re Armstrong*, 2011 – No. 1, the Board held that a legislator is not prohibited from supporting legislation favored by the legislator's outside employer or opposing legislation disfavored by that employer.

The general rule is that the outside employer cannot condition employment on legislative results or pay the legislator to push or advance the employer's legislative agenda or to oppose legislation disfavored by the employer. Absent facts that the legislator is engaged in any of these types of prohibited employment, the Ethics Act does not prohibit a legislator from introducing, supporting, advocating or voting for legislation that may benefit the outside employer or opposing legislation disfavored by the outside employer. *In re Armstrong*, 2011 – No. 1. Under the functional approach to analyzing conflicts, the Board has stated that areas of potential conflict may be reduced or removed by restructuring certain outside employment responsibilities. *Advisory Opinion 1999 – No.1*.

Respondent's employment with either CSP or Civil Survival does not present a *per se* violation of .020. Using the functional approach to analyzing Respondent's outside employment, with either CSP or Civil Survival, there is no evidence that either organization conditioned her employment on legislative results. In fact, when employed by the PDA, Respondent's contract with them specifically stated that her employment with them was not conditioned on legislative results.

During Respondent's employment with both the PDA and Civil Survival, Respondent has sought the advice of Board and House counsels. When she was first elected, Respondent, per the advice of counsels, removed all responsibilities from her job duties that could have presented a conflict with her official duties. When Civil Survival became a separate agency, Respondent again sought the advice of counsels and followed the advice provided. Respondent has consistently tailored her outside employment duties to avoid a conflict with her official duties. Furthermore, Respondent sought the Board's opinion on a potential conflict with her employment as the Director of the Civil Survival Project after being elected and the Board determined no such conflict existed.

Board Rule 1.N.2. states as follows: "In considering a complaint, the board will give weight to the fact that the person charged in the complaint relied in good faith on staff advice." Respondent consistently sought and followed the advice provided by Board and House counsels with regard to her outside employment.

The complaint also alleges that Respondent violated .020 by sponsoring legislation supported by her outside employer. As the Board has stated previously in *In re Armstrong*, "a legislator is not prohibited from supporting legislation favored by the legislator's outside employer or opposing legislation disfavored by that employer."

B. *RCW 42.52.040 – Assisting in Transactions*

This statute, in pertinent part, prohibits legislators, except in the course of official duties or incident to official duties, from assisting another person, directly or indirectly, whether or not for compensation, in a transaction involving the state in which the legislator is participating.

“Transaction involving the state” does not include the following: “...a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.” RCW 42.52.010(21)(b). There is no evidence to suggest that Respondent, in her non-legislative employment, has been involved in underlying transactions involving the state which have served as the basis for a case or lawsuit involving Civil Survival.

VI. ORDER

IT IS HEREBY ORDERED that reasonable cause does not exist to believe Respondent violated RCW 42.52.020 or .040. The complaint is dismissed.



Tom Hoemann, Chair



Date