

Witness Statement of Heidi Mabbott

I, Heidi Mabbott, 310 Maple Park Avenue SE, Olympia, WA 98504-7323, 360-705-7074, mabbott@wsdot.wa.gov , have been a Human Resources Assistant (HRC) 4 since May, 2014. Beginning in 2011, I was the WSDOT Diversity Coordinator. I have been with WSDOT since 2007.

In July, 2014, HRC 4 Alvina Mao, who had been supporting the Multimodal Planning Division, went on leave. Her workload was distributed among several HRC 4s, but I was named the main consultant to that division. When I first came to Multimodal, I contacted the managers, including Urban Planning Office (UPO) Manager Stacy Trussler. There were a number of items in her office that needed attention, including her own request for Reasonable Accommodation (RA) and an RA request from her staff member, Leah Bolotin, which HRC 4 Jennifer ~~Schafer~~ ^{Shaffer} took on. When HR Director Jeff Pelton realized that Ms. Mao would be out for some time, HRC 4 Alana Neal was assigned to the Multimodal Division, and I only kept working on issues directly related to Ms. Trussler and the Multimodal Division reorganization. Ms. ~~Schafer~~ ^{Shaffer} continued to work on Ms. Bolotin's issue.

The first time I met with Ms. Trussler was on September 15, 2014, in her office, together with HRC 1 Sherie Miller, who was there to listen and take notes. During the first half of the meeting we discussed various HR issues in her work group.

I had brought Ms. Trussler's RA working file with me, including her handwritten request for RA (which I had pulled from Ms. Mao's files) and her FMLA certification. I had not found any medical questionnaires drafted by Ms. Mao, and told Ms. Trussler that she and I were making a new start as far as her RA request was concerned. She absolutely did not object to our

discussing her accommodation request and needs. The conversation was very positive, and she seemed happy to have the discussion.

We covered a number of other items when we met, and then began discussing her RA. We walked through her RA request. She was very detailed about her own medical condition and what issues she has, including cognitive, vision and a recent additional diagnosis (the RA request we had on file, from March 24, 2014, only mentioned vision and cognitive issues.) I asked her how frequent her symptoms were, and she told me all day, every day, ^{at work and at home.} I asked what her preferred accommodation was. She provided me with a full list of her symptoms, including double vision resulting from the concussion from her October, 2012 accident, and fibro myalgia. She gave me the whole list of her medical issues. She said it was hard for her to get to work, and hard to be in long meetings. She told me she wanted the ability to telecommute, a flexible schedule, compassionate and understanding management, and acknowledgement of the challenges she faces.

HM We also agreed that an ergonomic assessment may help as well.

~~I noted that teleworking does not remove the conditions she has.~~ I told her that the next step in the RA process will be for me to develop medical questionnaires for her providers, and that I would need medical releases. I felt the meeting was very agreeable. I thought the RA form she had previously completed could be used, but that her most recent diagnosis of fibro myalgia needed to be added.

as it appeared to be her primary medical concern during our meeting. I later noted

On September 25 or 26, 2014, I met with Ms. Trussler concerning her employee, Leah Bolotin. The following were also in that meeting: Ms. Trussler's supervisor, Multimodal Planning Director Kerri Woehler, Ms. Bolotin's immediate supervisor Richard Warren, and Ms.

HM that telework would not likely be an effective accommodation if Ms. Trussler's condition affects her both at work and at home.

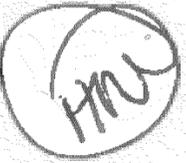
HM
Shaffer Shaffer
~~Schafer~~. Ms. ~~Schafer~~ and I told Ms. Trussler and Mr. Warren that we were concerned that they were allowing Ms. Bolotin to work full-time from home without a Telework Agreement or an RA in place. Ms. Trussler was unhappy in that meeting. She later alleged that I made comments there about telework never being full time, and about telework never being allowed as an RA. I did not make any such comments. The extent of telework ^{allowed} ~~for medical reasons~~ ^{as an accommodation} (for Ms. Trussler and Ms. Bolotin, as well as any other employee) is based on the employee's medical questionnaire, and the extent of ~~telework without medical reasons is depending on the essential~~ ^{which the job duties can be done in a} job functions and ^{both} ~~the approval of~~ the Appointing Authority. ^{essential} *→ The assessment for telework is done using the* *Telework Capacity*

HM
I next met with Ms. Trussler on October 30, 2014. HRC I Eric Landes (who was there to take notes+, and I were joined at this meeting by Ms. Woehler. She wanted to come with us when we went to Ms. Trussler's office in Seattle so that she could discuss some performance issues with her.

Ms. Woehler had a number of concerns that she brought to Ms. Trussler's attention.

These included:

- Ms. Trussler's needed to cease her involvement in her subordinate, Leah Bolotin's, request for RA. Ms. Woehler told Ms. Trussler that she had stepped outside her scope, and that she (Ms. Woehler) would be assuming the role of Appointing Authority in this situation. When Ms. Woehler told her this, Ms. Trussler's affect was flat as she responded that, "I have nothing to say at this time."
- Ms. Woehler told Ms. Trussler that her position requires more community engagement than she had been providing.

- Ms. Woehler also discussed the amount that Ms. Trussler was teleworking without having a Telework Agreement in place. I had actually found several Telework Agreements for Ms. Trussler, but none of them was signed. Ms. Woehler noted that Ms. Trussler teleworks every Wednesday, but said they have no RA in place for that. Ms. Trussler again said she had nothing to say about that at this time. Ms. Woehler told Ms. Trussler that after she returns from her vacation, she ~~would no longer be~~ teleworking. ^{was to cease} 
- Ms. Woehler also told Ms. Trussler that there were some reorganization plans in the works, and that these would be taking place after Ms. Trussler returned from her vacation.

After each of Ms. Woehler's comments, she asked if Ms. Trussler understood or had any questions. Ms. Trussler repeatedly told her she would respond later. She was adversarial, angrily staring at Ms. Woehler the entire time that Ms. Woehler was talking. Ms. Woehler has a tendency to be a little soft and passive, but she was very clear in her directives to Ms. Trussler in this conversation. After Ms. Woehler finished and left the office, Mr. Landes, Ms. Trussler and I remained.

I then began to speak with Ms. Trussler about her medical conditions and the accommodations she was requesting. I told her I had brought the release forms I needed her to sign. I had gotten the names of her eye doctor, neurologist and one other doctor from her FMLA forms, and had left the name of the provider blank on the form concerning her fibromyalgia since that was not in any of her other documents.

~~She told me that sitting for a long time exacerbated her symptoms, so I asked if she wanted an ergonomic assessment. She said she did.~~

AMM
This is from Sept. mtg.

She interrupted me then, and said that she wanted everything she had told me at our September 15 meeting to be off the record. I was surprised. I told her that once she has given us (Human Resources) information, we have it and it can't be off the record. She also said she would not sign the release forms. So I asked her whether she was saying that she is no longer requesting accommodation. She said that was not the case, but that she wanted to see the questionnaires before they were sent to her doctors. It is not ~~common~~ to share the questionnaire with the employee before they are sent to the doctor, and we are not required to share them once we have the signed release of information.

Because she was about to go on an extended vacation, I told Ms. Trussler that we would regroup when she returned. The atmosphere in this meeting was nothing less than hostile. I told Ms. Trussler that I didn't know how our communication had become so disconnected.

She replied that that had happened in the earlier conversation about Ms. Bolotin's RA

request. She said that I had answered two questions incorrectly, causing her to lose trust in me. I asked her to tell me about that. She said she had asked whether we would ever offer full-time teleworking, and that I had responded, "never." Then she said that I said we never offered teleworking as an accommodation.

I told her that all offers of teleworking were position-specific, and that we do offer telework if the position allows for it. I'm not the authority on teleworking. But in any event, an employee still has to follow the telework policy. In this whole meeting I was always frank with Ms. Trussler, and never hostile.

AMM
and therefore justifying her hostile behavior toward me.

require a telework agreement

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I told her that we frequently offer telework as an accommodation, and that there was no policy concerning full-time telework. I told her I would never have said what she thought she had heard me say. ~~the hostile behavior she exhibited as a result.~~

Handwritten: Nor do I believe it justifies the hostile behavior she exhibited as a result.

I also told her that in the past I have worked with people with traumatic brain injuries.

I've seen what those can do to people. I told her that I've seen people lose jobs, relationships, their self-identity, family ties and independence. My intent in making these comments was to help her understand my background in dealing with people with injuries like hers. Ms.

Schneider told me that Ms. Trussler believed I was threatening her with losing her job when I made these remarks. I would never, ever threaten anyone in this Agency with losing their job.

Ms. Schneider said that Ms. Trussler told her that I said if she didn't sign the release forms, we would bring in a third party evaluator for a medical assessment. I don't recall saying that. I don't have the authority to require that. I did tell her that if she doesn't want to move forward with her RA request, I'd recommend that we bring in an independent medical examiner to look at her. In the few months that I worked with Ms. Trussler, I constantly thought about whether she was safe to be working. We have no medical release for her after her injury, but she keeps telling us she has many medical issues. I'm concerned about actual harm to her, and concerned about the job not getting done. An independent medical examiner would make a recommendation to Ms. Woehler, Ms. Trussler's Appointing Authority, who would pay for the assessment. If Ms. Trussler declined to participate, we would consider her request for RA closed.

Handwritten: and we were unable to get sufficient medical information,

Handwritten signature: HM

In this meeting we did finally get past the discussion of the independent medical evaluation. I agreed to draft questionnaires for Ms. Trussler's doctors, and provide them to her for her review.

She was hostile, and treated me horribly. My responses to her comments didn't change her demeanor at all. She basically dismissed me at that point. We agreed to reschedule a meeting to discuss the medical questionnaires.

On December 5, 2015, Ms. Woehler asked Ms. Schafer and me to her office for a conference call with Ms. Trussler concerning her having been on a call to discuss Ms. Bolotin's RA request. Ms. Woehler ~~also~~ asked Ms. Trussler about that. Ms. Trussler confirmed that she was on the call. Ms. Woehler stated that she had previously directed Ms. Trussler to remove herself from this process, and Ms. Trussler confirmed that. Ms. Woehler then asked her whether what she was saying was that she was going to continue to involve herself with Ms. Bolotin's RA process. Ms. Trussler responded that she was on the call on her day off, and that what she did on her own time was not Ms. Woehler's business. Ms. Woehler disagreed, and told her that her role with the Agency did not change just because it was her day off. She then asked Ms. Trussler whether she will continue to be involved with Ms. Bolotin's RA request, and Ms. Trussler said that she would, and reiterated that what she did on her day off was none of Ms. Woehler's concern.

I understand that about the second week in December, Ms. Woehler and Ms. Miller met with Ms. Trussler to discuss concerns that Ms. Woehler had with her performance. These included work product, teleworking, continuing to have "do not schedule" on her calendar contrary to direction, failing to report leave taken, and continuing to insert herself in Ms.

✓ Bolotin's RA process. I was told that Ms. Trussler said she would continue teleworking per her RA and telework agreements with her former supervisor, Brian Smith (retired), and said she believed that Ms. Woehler was obligated to honor that agreement. Ms. Woehler told Ms. Trussler she now has a new manager, that we don't have verbal telework agreements, and that she would be writing her a Letter of Concern. I understand that Ms. Trussler responded that that would be nice.

MS
Ms. Schneider asked me why Ms. Woehler planned to give Ms. Trussler a Letter of Concern rather than administer discipline. That was Ms. Woehler's preference. She still had hope for Ms. Trussler. Ms. Trussler was still in the middle of the RA process, and Ms. Woehler was hoping for a positive place with her relationship with this employee.

✓ After I learned about what had happened in this meeting, I advised Ms. Trussler to follow her supervisor's direction, and told her we would be scheduling a meeting to discuss the medical questionnaires I would be sending to her providers. I reviewed her personnel file, her medical file and her position description, and based on all of this information, then drafted the medical questionnaires for the three providers listed in her FMLA paperwork (her psychologist, ophthalmologist and neurologist). I also created a questionnaire for a fourth provider since she said she was being treated for fibro myalgia, but I didn't know that doctor's name.

✓ On December 31, 2014, Ms. Woehler, Ms. Miller and I went to meet with Ms. Trussler at her office. We got there about 8:50 for our 9:00 o'clock meeting. Laura Thompson, Ms. Trussler's assistant, told us that she was not yet in, and that that was "pretty typical" for her. Ms. Thompson said that Ms. Trussler generally "sneaks" in the back door so that nobody

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ms. Thompson indicated that she would like to meet with me to discuss concerns she has.

sees her come in. ~~The~~ Ms. Trussler did come in the back door. She walked by us on her way to her office, but did not acknowledge us. We received a cold reception from her.

At about 9:07, we went into Ms. Trussler's office uninvited, and told her we were ready to get started. She agreed. She sat at her desk, we sat across from her. As we were about to get started, she grabbed her phone, did something with it and put it on the desk. I asked whether she was recording, and she said that she was. I told her that was illegal. She said she was doing it in front of us.

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She did not ask for consent to record us; nor did Ms. Miller or I provide consent to be recorded.

I then gave her the medical questionnaires I had prepared, and she asked me who wrote and who reviewed them. I told her that I wrote them, and that Ms. ~~Schaefer~~ ^{Shaffer} and HRC 4 Joni Wheeler had both reviewed them. It is not uncommon for HRCs to be asked to review and give input on each other's work. That's what happened here. We all sign confidentiality statements, and don't share anything without a business need.

Ms. Trussler asked whether Ms. Woehler or Ms. Miller had reviewed the questionnaires; I told her they had not, but that I had discussed her essential job functions with Ms. Woehler.

Ms. Trussler asked for her job description, which I gave her. She took four or five minutes to look at it. Her eyes got wide and her hands trembled. ~~She then said she was ready to move~~

I had to prompt Ms. Trussler

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on. Ms. Trussler read through the questionnaires, and made some comments. She did not request any changes or dispute anything that was in them. She never mentioned that she only

wanted a questionnaire sent to one provider. She then grabbed all the questionnaires and put them in her folder. I asked whether she had any further questions, and she said she did not.

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~~I then presented medical release forms for Ms. Trussler's but told me not to contact her medical providers.~~ I asked whether she was declining to signature, and she refused to sign them stating that I will not be contacting her providers.

participate in the accommodation process, and she said she was not declining to do so, and that she was requesting accommodation. The way things were going made no sense to me.

I told Ms. Trussler that if she was not going forward with this process I was concerned. She said again that she was not refusing to go forward, that she just needed time. I told her I would give her one week. She asked why I got two months, and she only got one week, and I told her that was because it was her information, and that it should not take her more than one week to review. She then asked how many RA requests I had done. I told her that this was not about me, and that if she had questions about the process, we could discuss those.

I told Ms. Trussler that her Appointing Authority had determined that her position is not eligible for teleworking. She stated that she wanted a flexible schedule, and I told her she had that. She acknowledged that she did, but added that it came with harassment and bullying and hostility from her management, from Ms. Woehler and Ms. Scarton. I told her that if she was feeling harassed, she needed to contact Brenda Reagan, and provided her with Ms. Reagan's contact information. I left the questionnaires and release forms with Ms. Trussler, and we left the meeting.

 I later sent an email to Ms Trussler summarizing the meeting. I reminded Ms. Trussler January 7, 2015, was the deadline for Ms. Trussler's review of the documents. ~~I contacted her, and she told me she was refusing to sign the medical releases. She said~~ she wanted to take the questionnaires to her doctors so that they and she could write the questions together. I told her that was not for her to do. Not long thereafter we received the letter from her attorney.

On January 28, 2015, I notified Ms. Trussler that I was closing her RA request. I received no response from her.

HM On January 14, 2015,

I ~~was~~ met with Ms. Trussler's assistant, Laura Thompson. She told me that Ms. Trussler

"was never around," and that the local and regional jurisdictions with which she dealt, as well as the Puget Sound Regional Council (PSRC) had all lost respect for her. Additionally, she said that if Ms. Trussler is in the office, her door is closed and she doesn't answer my or

other employees' knocks. I shared this information with Ms. Woehler. *MS. Thompson*

also stated MS. Trussler continued to telework despite direction to stop.
Ms. Thompson also told me that Ms. Trussler and Ms. Bolotin were very close.

HM When Ms. Trussler was placed on home assignment, she requested some files from her office. HR Director Jeff Pelton gave me those files. They included Ms. Bolotin's medical information, which is information that Ms. Trussler should not have had. They also included six or seven pages of Ms. Bolotin's typed notes from a meeting she had in late November with Ms. ~~Schneider~~ *Shaffer*. As of now, these files have not been given to Ms. Trussler.

Ms. Schneider asked me a number of specific questions not addressed above; here are the topics and my responses:

- Charles Prestrud: When I first started working with Ms. Trussler, she told me that Assistant Secretary Amy Scarton had told her to fire Charles Prestrud. I had seen a comment about that in a file I received from Ms. Mao. Nothing in the file indicated that Mr. Prestrud had done anything that was terminable. Ms. Trussler later told me the situation concerning Mr. Prestrud had been resolved. She said he needed some coaching and mentoring, but there was nothing requiring follow-up from me. That was the only issue about Ms. Scarton that Ms. Trussler ever raised with me.

- Changes in Reasonable Accommodation procedures: The RA procedures were re-written in the middle of 2014, during the time that both Ms. Trussler and Ms. Bolotin

or that MS. Scarton ordered his employment be terminated

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were in the RA process: I reported to Brenda Reagan, in the Internal EEO office until May, 2014. Before coming to Employee Relations, EEO was updating both Chapter 25 (Reasonable Accommodation) of the WSDOT policies and Chapter 29 (Discrimination, Harassment and Equal Employment Opportunity). We rewrote and cleaned up the policies, and shortened them by a few pages. The essential processes remained the same. For Ms. Trussler, Ms. Bolotin and anyone else in the process of applying for RA, there should not have been any impact from the revision work we did.



- Leah Bolotin's RA process: I was in and out of Ms. Bolotin's request for accommodation. Ms. ~~Schafer~~^{Shaffer} was the lead, and included me when she felt it was appropriate to do so. I don't recall ever telling Ms. Trussler that accommodations that had been granted were not permanent. There is a box that can be checked on the RA form that says, "Permanent." It is used for tracking accommodations in the data base. It does not mean that you get the accommodation forever. Accommodations might require reassessment from the perspective of both the employer and the employee. Checking "Permanent" does not mean the accommodation is never reviewed.
- Telework as an accommodation: In Ms. Trussler's specific case, teleworking was not approved as an accommodation, though it could be in other cases. There is nothing in writing giving Ms. Trussler an RA that includes teleworking. Both telework specialist Tanya Hicks and Ms. Woehler assessed Ms. Trussler's position, and it was not approved for teleworking. That said, If we received information that came back from a medical provider through a questionnaire that supported telework, we would go

back to the appointing authority to see if it could be accommodated. I did tell Ms. Trussler that she was eligible to telework for inclement weather, or one-off meetings if needed. In alleging that I told her she could not telework I feel that Ms. Trussler is grabbing pieces of our conversation^s and taking them out of context.

- RA request timeline and reorganization: Generally, an RA request takes at least 90 days to process, and there are supposed to be updates for the requesting employee every 30 days. I don't know whether we met every thirty day notification requirement exactly, but I regularly checked in with her.

I was involved in reorganization discussions from shortly after Ms. Woehler began her work with the Multimodal Planning Division. These conversations were ongoing, and were likely going to result in changes in essential job functions for a number of

positions in that division. We were also discussing the possibility of shifting the UPO work to the NW Region, which ~~would~~^{could} result in the elimination of Ms. Trussler's position. When I met with Ms. Schneider, no decision had been made about this.

Since I knew these conversations were happening, it took me longer than usual to write the questionnaires for Ms. Trussler's medical providers. Ms. Trussler is a WMS 4 manager, and I was trying to be thorough, not hasty.

- Number of doctors: Ms. Schneider told me that Ms. Trussler was upset that I had developed questionnaires and medical releases for all four of her providers. She never told me that she only wanted accommodation through one provider, Dr. Kinney. At our September 15, 2014 meeting, when I asked her what she wanted accommodation for, she gave me the whole list of her medical issues. It takes a lot of work to write

medical questionnaires. If she had told me she only wanted accommodation through

one provider, I would have honored that request and this process would have been

shorter.

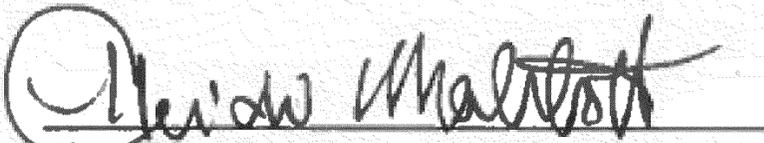
Also, Ms. Trussler refused to release information from any of her providers; including Dr. Kinney.

- “Threat” of termination: Ms. Schneider told me that Ms. Trussler felt I was threatening her when I explained the ^{entire} accommodation process to her. I was not. I explained that if we are unable to accommodate someone in their current position, and if they are therefore unable to do that job, we would look for a disability reassignment for them. Then, if that did not work, the result would be a disability separation. But, we would never jump to just a separation.
- Reporting work schedules and leave taken: Ms. Schneider asked me whether there is a standard way that managers at Ms. Trussler’s level documents work schedules and leave taken. This is something that is worked out between the manager and his/her supervisor. There is no Agency-wide way of doing this. Generally, managers do report leave taken, no matter what, and also report if they work on their non-work time.

I want to make one final point: I understand that Ms. Trussler told Mr. Pelton ^{Ms. Wachter and} and I was out to get her, and was conspiring with Ms. Scarton to get rid of her. That’s is absolutely untrue. I feel like I was the only person in the world who was trying to help her. Where she got this notion that I was a threat, I don’t know. I worked really hard to try to help her, and I feel it was all for nothing. I take my job very seriously, especially where requests for reasonable accommodation are concerned.

Every time I met with Ms. Trussler, someone was always with me. That's actually pretty normal for RA requests, desk audits, etc. It's good to have another person along to listen and take notes.

This statement, including any edits made by me, is true to my best knowledge and belief.


Signature

6/6/15
Date

HEIDI MABBOTT
Name - please print