

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 00-28

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between ██████████ Respondent, and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

1. ██████████ is an employee with the Department of Social and Health Services (DSHS), and served as a review coordinator at all times material to the allegations herein.
2. A review of conducted by the Washington State Auditor revealed that from October 1999 until April 2000, ██████████ used a DSHS provided computer and Internet access to review at least 552 Internet websites that were unrelated to his official duties. The websites included Dow Jones charts, stockbrokers, sports, news, and retail sales. The total time spent viewing inappropriate websites totaled at least 18 hours.
3. ██████████ reviewed the State Auditor's Report with Board staff and did not dispute the findings in that investigation.
4. In response to the State Auditor's Investigation, DSHS reprimanded ██████████ denied him access to the Internet for a period of six months, and required ██████████ to attend

ethics training. While [REDACTED] secured permanent employment in another DSHS division, the corrective action in this matter did not result in a loss salary or benefits.

B. APPLICABLE LAW

1. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand, it is an aggravating factor that: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) the violations involved personal gain to [REDACTED] (WAC 292-120-030(2)(f)).

2. It is a mitigating factor that [REDACTED] agency took corrective action for the conduct at issue in this case (WAC 292-120-030(4)(d)).

D. RESOLUTION

1. [REDACTED] admits that he violated provisions of chapter 42.52 RCW by using state facilities for personal gain, a violation of RCW 42.52.160.

2. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW while employed by the state of Washington.

3. The total amount of the civil penalty (\$500.00) is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.
2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.
3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) that states in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty. [REDACTED] agrees to release and discharge the Board, its officers, agents, and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Order.
2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Department of Social and Health Services, the State of Washington, or other third party, which are now in existence or may be filed in the future.
3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

G. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

[REDACTED]

10/29/02
Date

Stipulated to and presented by:

Brian R. Malarky, Executive Director Date

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G. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

[REDACTED]

10/29/02
Date

Stipulated to and presented by:

Brian R. Malarky 10/29/02
Brian R. Malarky, Executive Director Date

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II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the

Stipulation is

X

ACCEPTED in its entirety;

REJECTED in its entirety;

*MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

DATED this 8th day of November, 2002

Laquita Fields

Laquita Fields, Chair

Marilee Scarbrough

Marilee Scarbrough, Vice Chair

Sutapa Basu, Member

James M. Vaché

James M. Vaché, Member

Paul Zellinsky

Paul Zellinsky, Member

I, _____, accept/do not accept (circle one) the proposed modification.

Respondent

Date

Attorney for Respondent

Date