

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 00-35

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. RELEVANT FACTS**

1. The above-referenced complaint was initiated by the Board based on a  
whistleblower referral on March 19, 2001. The complaint alleges that ██████████ used state  
resources to conduct a personal business involving the sale of ceramic products.

2. Respondent, ██████████ is employed as an administrative assistant at Green  
River Community College.

3. ██████████ forwarded her personal e-mail messages from her home computer to  
her computer at the college. Between February 12, 1999, and May 20, 1999, she sent or received

eighteen e-mails on her work computer which were related to personal business transactions involving the sale of ceramic products on E-Bay.

4. During December 1999, [REDACTED] received eleven messages on her work computer which were related to personal business transactions.

5. From February 1999 through December 1999, [REDACTED] used her work computer to access at least thirteen internet sites which were unrelated to her official job duties.

6. In January 2000, [REDACTED] was notified by her employer that her personal use of her work computer was inappropriate. [REDACTED] immediately ceased forwarding her personal e-mail to her work computer and requested that internet access be removed from the computer at her work site.

7. Green River Community College has developed an ethics policy that was adopted by its Board of Trustees in September 2001. The college president has notified all college employees via e-mail memorandum about the new policy, all college employees have received a printed copy of the policy, and a copy has been posted on the college's intranet site.

8. [REDACTED] has no previous ethics violations.

## **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.

2. WAC 292-110-010(6) prohibits certain uses of state resources, that prohibited use includes:

- (a) Any use for the purpose of conducting an outside business or private employment; . . . .

### **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 [REDACTED] personal use of the college computer to conduct her private business was continuing in nature (WAC 292-120-030(2)(a)), was motivated by financial gain (WAC 292-120-030(2)(b)), and tended to reduce public respect for or confidence in state government employees (WAC 292-120-030(2)(e)).

2. It is a mitigating factor that during the time [REDACTED] was conducting personal business on her work computer, the college did not have a policy prohibiting such conduct. (WAC 292-120-030(4)(e)). It is also a mitigating factor that [REDACTED] personal use of her work computer did not involve an excessive amount of state-paid time and that she stopped the conduct as soon as she was notified it was a violation (WAC 292-120-030(4)(e)).

3. It is a mitigating factor that [REDACTED] cooperated fully with the investigation of this matter (WAC 292-120-030(4)(e)).

### **D. RESOLUTION**

1. [REDACTED] admits that she used state resources to conduct a private business that was not related to the performance of her official duties for the State of Washington, that the violations continued over many months, and that such use was a violation of RCW 42.52.160(1).

2. Recognizing that she is personally responsible for her conduct, [REDACTED] will pay a civil penalty in the amount of three hundred dollars (\$300.00) with one hundred fifty dollars (\$150.00) suspended, comply with all terms and conditions of this Stipulation and Order, and commit no further violations of chapter 42.52 RCW.

3. The total amount of the civil penalty (\$150.00) 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. The use of state resources to conduct a private business is an inappropriate use of state resources.
3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.
4. 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

2. claims, damages, and causes of action arising out of this complaint and this Stipulation and Order.

3. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and Green River Community College, the State of Washington, or other third party, which are now in existence or may be filed in the future.

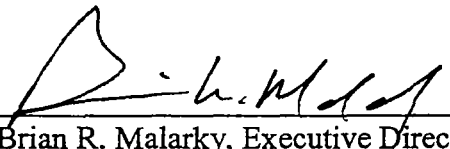
4. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

### G. CERTIFICATION

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

[REDACTED]

Stipulated to and presented by:

  
Brian R. Malarky, Executive Director      FEB 14 2003  
Date

**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;

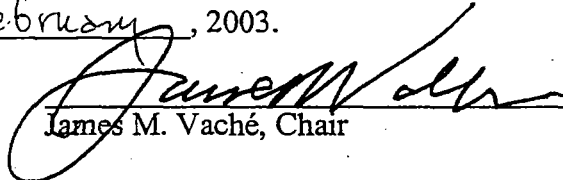
REJECTED in its entirety;

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

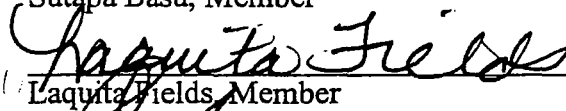
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

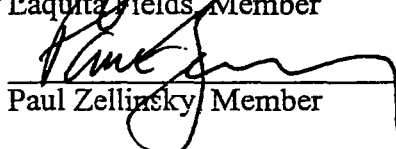
DATED this 14<sup>th</sup> day of February, 2003.


  
James M. Vaché, Chair

\_\_\_\_\_  
Marilee Scarbrough, Vice Chair

\_\_\_\_\_  
Sutapa Basu, Member

  
Laquita Fields, Member

  
Paul Zellinsky, Member

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

2/3/03  
Date