

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

████████████████████

Respondent.

No. 02-43

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

2.4. On August 26, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that ██████████ an employee of the State of Washington, Sentencing Guidelines Commission (SGC), used his state computer to send or receive personal e-mail, compose personal documentation and access Internet sites for personal reasons. The Board also received a complaint on September 23, 2002, similarly alleging that ██████████ was using his state computer for personal use.

2.5. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings

under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

2.6. [REDACTED] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

2.7. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude [REDACTED] violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

2.8. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides 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.

2.9. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. [REDACTED] in turn 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 agreed order.

2.10. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

2.12. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, the State of Washington, SGC employed [REDACTED] as a Research Investigator.

2.2. Review of [REDACTED] state computer revealed a personal record of checking and savings account transactions containing more than 3,100 entries dating back to February 1998. [REDACTED] state computer also contained a detailed log of more than 400 entries pertaining to the purchase, financing and maintenance of his vehicle.

2.3. [REDACTED] also used his state computer to compose a personal advertisement that listed his work telephone number and to write personal letters. He also sent jokes by e-mail to co-workers and accessed Internet sites relating to baseball and hunting. Although [REDACTED] used the Internet on a daily basis to perform his official duties, these Internet sites were not

related to his official duties. The majority of this use occurred prior to the change in the rules allowing for de minimus personal use of the internet by state employees.

2.4. [REDACTED] participated in a e-mail trivia “contest” with other SGC employees on nearly a daily basis. [REDACTED] asserts that staff would race to see who could complete the answers to e-mail trivia contests. The Executive Director ([REDACTED] supervisor) not only condoned the behavior, but actually participating in the trivia contests, which may have led the staff to believe that it was acceptable. The SGC denies that this was improper use of state resources.

2.5. On April 24, 2000, the SGC issued an administrative policy regarding the use of Internet systems. That policy states, in part:

...Internet access and services are provided to employees of the Sentencing Guidelines Commission for the sole purpose of assisting them in performing official duties. ... Sentencing Guidelines Commission computer resources, information technologies, and networks may be used for legitimate SGC purposes only. Internet access and services are provided for official Sentencing Guidelines commission business activities. ... Sentencing Guidelines Commission computer resources, information technologies, and networks, including Internet access shall not be used for the following prohibited activities: Accessing the Internet for personal business, personal interest or any other non-Sentencing Guidelines Commission business use. ...

The SGC policy further indicates that SGC employees may make occasional but limited personal use of computer systems, if there is no cost to the state, the use of state resources does not interfere with the performance of the employee’s official duties, the use is brief in duration and does not disrupt or distract from the conduct of state business due to volume and frequency, and the use does not compromise the security or integrity of state information or software. The SGC policy was not submitted for approval to the Board.

2.6. [REDACTED] asserts that he received a verbal admonishment for his personal use of the computer for maintaining his banking records and vehicle maintenance log.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state 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.”

3.4. The Ethics in Public Service Act allows for de minimus personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. The majority of [REDACTED] inappropriate use of state resources occurred before this de minimus rule was adopted in April 2002.

3.5. Based on Findings of Fact 2.1 to 2.6, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010 and agency policy when he maintained personal documentation on his state computer and accessed the Internet for personal interests.

3.6. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an aggravating factor that the violation was continuing in nature (WAC 292-120-030(2)(a)). It is a mitigating factor that after the SAO’s investigation findings [REDACTED] was admonished by the Executive Director for his inappropriate use of state resources (WAC 292-120-030(4)(a), and [REDACTED] supervisor, the Executive Director, participated and encouraged use of state resources to respond to the trivia questions (WAC 292-120-030(4)(c)).

Section 4: AGREED ORDER

4.1. [REDACTED] will pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The Board agrees to suspend the entire civil penalty on the condition that

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

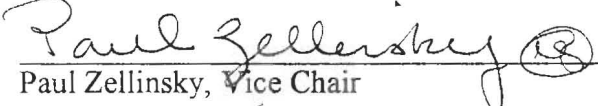
- _____ ACCEPTED in its entirety;
- _____ REJECTED in its entirety;
- X MODIFIED. This Stipulation will become the Order of the Board if the

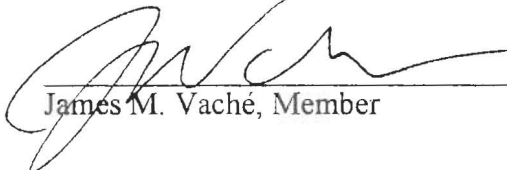
Respondent approves* the following modification(s):

The civil penalty of \$250.00 shall not be
suspended. The total amount payable shall
thus be \$500.00

DATED this 13th day of February, 2004.


Marilee Scarbrough, Chair


Paul Zellinsky, Vice Chair


James M. Vaché, Member

Trish Akana, Member

*I, Edward Vukich, accept do not accept (circle one) the proposed modification(s).

