BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: JEFF WILCOX, Respondent.	NO. 02-035 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, JEFF WILCOX, 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

1.1. On February 13, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Jeff Wilcox, an employee at the State of Washington, Pollution Liability Insurance Agency (PLIA), used his state computer and computers assigned to other agency employees to access adult-oriented web sites, play fantasy football and other games, and chat online. The Executive Ethics Board reviewed this referral and issued a complaint on September 12, 2002.

1.2. On February 13, 2004, upon receiving the Board staff's investigative report and recommendation, the Board determined that there was reasonable cause to believe that Jeff Wilcox had committed one or more violations of chapter 42.52 RCW and that the potential penalty was in

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excess of $500. The reasonable cause determination was based on alleged violations of RCW 42.52.160.

1.3. 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.

1.4. Jeff Wilcox 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).

1.5. Jeff Wilcox recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Wilcox 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.

1.6. Jeff Wilcox 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.

1.7. If the Board accepts this stipulation, the Board will release and discharge Jeff Wilcox 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, any other costs imposed,

and compliance with all other terms and conditions of the agreed order. Mr. Wilcox 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.

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

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

1.10. If the Board rejects this stipulation, or if Jeff Wilcox does not accept the Board's proposed modification(s), if any, Mr. Wilcox waives any objection to participation at the hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Wilcox 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: FINDNGS OF FACT

2.1. When the complaint in this matter was filed, the PLIA employed Jeff Wilcox as an Information Technology Technician 2. Mr. Wilcox began his employment with PLIA in April 1997 as Office Assistant. In April 2002, Mr. Wilcox resigned his state position in April 2002 in lieu of termination.

2.2. As an Information Technology Technician 2, Jeff Wilcox was responsible for computer support and maintaining the integrity and security of the PLIA information technology system. His duties also included creating log-in passwords, training staff in the use of computers, and providing technical guidance to assist staff with problems pertaining to computer work.

2.3. Jeff Wilcox used his state computer to store more than 500 graphic image files, none of which related to state business. More than 50 of the files contained adult-oriented material.

2.4. Jeff Wilcox also participated in an on-line fantasy basketball league using his state computer. He also used his state computer to gain Internet access to websites related to sports and newspapers. He logged into his personal hotmail account and received/sent instant messages to his friends. Mr. Wilcox accessed radio stations through the Internet and downloaded programs off the Internet onto his state computer.

2.5. Jeff Wilcox sometimes worked after hours to catch up on work. During this time, he would work for an hour and then spend 15-20 minutes playing computer games or surfing the Internet.

2.6. PLIA managers previously suspended Mr. Wilcox's Internet access for 30 days because he was accessing adult oriented material through the Internet on another employee's computer. Despite the 30-day suspension, Mr. Wilcox continued to access inappropriate material.

2.7. PLIA Policy dated March 17, 2000 addresses "Use of Electronic Media and Government Equipment." This policy states that "Employees may not make use of PLIA's Internet access, except for limited use during personal time. Under normal circumstances, access to the Internet is for official business purposes only." The Policy further states that PLIA's internet and email systems shall not, under any circumstances, be used for transmission of information or messages which promote or involve pornography. This policy was in effect at the time in question.

2.8. Jeff Wilcox resigned his position with PLIA in lieu of termination for the incidents described herein.

2.9. Jeff Wilcox asserts that he has obtained sporadic employment since leaving his job with PLIA. Recently he obtained a job as a part-time cook and dishwasher at a local restaurant, making approximately $7.50 per hour. Mr. Wilcox also asserts that his agency director allowed personal use of the state computer.

Section 3: CONCLUSIONS OF LAW

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

3.2. 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."

3.3. Use of state resources for conduct that is prohibited by a federal or state law or rule, or a state agency policy, is prohibited under WAC 292-110-010(6)(e).

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. However, those standards do not authorize any access to adult-oriented material.

3.5. Based on Findings of Fact 2.3 through 2.6, Mr. Wilcox violated RCW 42.52.160(1) in a manner that clearly exceeded de minimis standards and violated the prohibited uses under WAC 292-110-010.

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 circumstance that Mr. Wilcox committed the violation with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)). It is a mitigating factor that Mr. Wilcox resigned in lieu of termination (WAC 292-120-030(4)(a).

Section 4: AGREED ORDER

4.1. Jeff Wilcox 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) of the civil penalty on the condition that Mr. Wilcox complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW.

4.2. The civil penalty due in the amount of five hundred dollars ($500.00) is payable to the *State of Washington,* which will be remitted to the Executive Ethics Board in ten (10) equal installments of fifty dollars ($50.00) with the first payment due on May 31, 2004, and successive payments due on the last day of each month until the last payment which is due on February 28, 2005. Failure to make timely payment will cause the entire amount of the civil penalty to become due and payable within ten (10) days of the missed payment.

4.3. Jeff Wilcox will cooperate in the Board's investigation of other matters related to the time of his employment at PLIA, will testify truthfully regarding the facts of his employment with PLIA and the facts recited above at any subsequent Board proceedings.

CERTIFICATION

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

3/19/04

Jeff Wilcox
Respondent

Date

Stipulated to and presented by:

2 March 04

Brian R. Malarky
Executive Director

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 Respondent approves* the following modification(s):

_____

_____

_____

DATED this 9th day of April 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yensen, Member

* I, Jeff Wilcox, accept/do not accept (circle one) the proposed modification(s).

_____

Jeff Wilcox, Respondent Date