

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 03-015

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld 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 March 4, 2003, the Executive Ethics Board received a complaint alleging that Withheld an employee of the State of Washington, Department of Social and Health Services (DSHS), used state resources and a state provided computer to copy and distribute jokes to co-workers via hardcopy and e-mail.

1.2. 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.

1.3. Withheld 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).

1.4. Withheld recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Withheld 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.

1.5. Withheld 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Withheld 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. Mr. Withheld 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.

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

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

1.9. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Mr. [Withheld] 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, Mr. [Withheld] 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, DSHS, employed [Withheld] as a Machine Shop Supervisor for DSHS Consolidated Support Services (CSS) in Medical Lake, Washington.

2.2. On July 10, 2001, [Withheld] completed "Internet Connectivity" training regarding appropriate use of state property, including Internet access and services. In addition, on November 7, 2000, Mr. [Withheld] completed training regarding "Ethics and Policy Review".

2.3. On January 16, 2003 and February 20, 2003, [Withheld] received an e-mail from the Acting Operation Manager for CSS, containing a joke unrelated to Mr. [Withheld] official duties.

2.4. On January 16, 2003, [Withheld] used a state-owned copier to reproduce and disseminate copies of the e-mail to his co-workers.

2.5. On March 12, 2003, John Thompson, [Withheld] supervisor, counseled Mr. [Withheld] regarding his inappropriate use of e-mails and the state-owned copier. Mr. Thompson sent Mr. [Withheld] a memo summarizing their conversation, including Mr. [Withheld] agreement not to repeat the inappropriate conduct.

### Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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.

3.5. Based on Findings of Fact 2.1 through 2.5, Mr. [Withheld] violated RCW 42.52.160(1) in a manner that exceeded de minimis standards and disrupted performance of official duties by other employees.

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

Withheld

and consideration of any mitigating or aggravating factors. It is a mitigating factor that [redacted] received counseling from the Acting Operations Manager, his upper level supervisor. ((WAC 292-120-030(4)(a))).

**Section 4: AGREED ORDER**

4.1. [redacted] will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). [redacted] will also pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The Board agrees to suspend one hundred dollars (\$100.00) of the civil penalty 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. The \$150.00 due on the civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

**CERTIFICATION**

I, [redacted] 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 voluntarily agree to this Stipulation.

[redacted]

Respondent

Stipulated to and presented by:

*Brian R. Malarky*  
Brian R. Malarky  
Executive Director  
*Apr 2, 2004*  
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

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

ACCEPTED in its entirety;

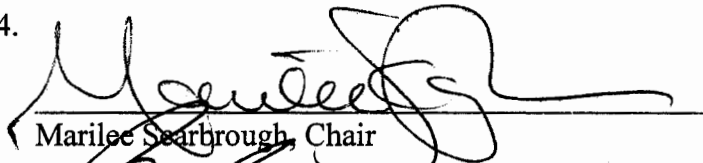
REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the

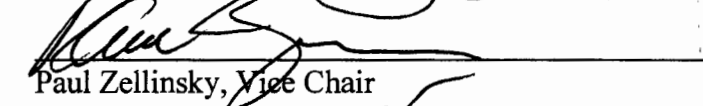
Respondent approves\* the following modification(s):

\_\_\_\_\_ monetary penalty shall be \$500.<sup>00</sup>  
I HEREBY REQUEST A PAYMENT PLAN OF  
\$50. PER MONTH.

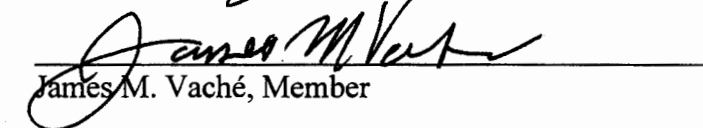
DATED this 9th day of April, 2004.

  
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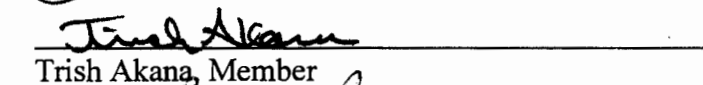
Marilee Searbrough, Chair

  
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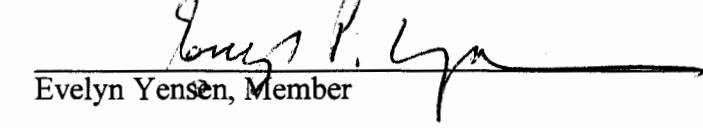
Paul Zellinsky, Vice Chair

  
\_\_\_\_\_

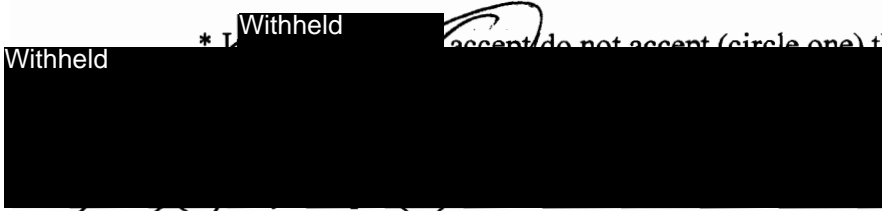
James M. Vaché, Member

  
\_\_\_\_\_

Trish Akana, Member

  
\_\_\_\_\_

Evelyn Yensen, Member

Withheld  
\* I  accept/do not accept (circle one) the proposed modification(s).

**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

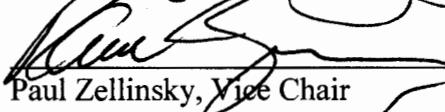
Respondent approves\* the following modification(s):

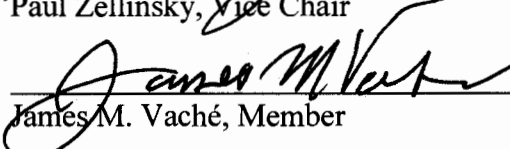
\_\_\_\_\_ *monetary penalty shall be \$500. <sup>(b)</sup>*

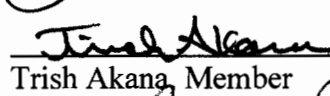
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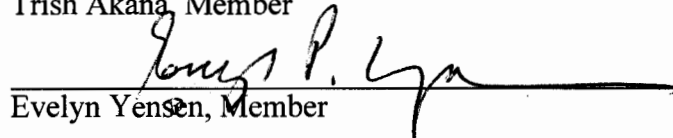
DATED this 9th day of April, 2004.

  
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Marilee Searbrough, Chair

  
\_\_\_\_\_  
Paul Zellinsky, Vice Chair

  
\_\_\_\_\_  
James M. Vaché, Member

  
\_\_\_\_\_  
Trish Akana, Member

  
\_\_\_\_\_  
Evelyn Yensen, Member

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

Withheld Respondent \_\_\_\_\_ Date \_\_\_\_\_