

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 01-84

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 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.

**A. FACTS**

1. On May 8, 2001 the State Auditor's Office (SAO) referred the final report of Whistleblower Case No 00-151 to the Executive Ethics Board. The referral alleged that the Respondent, ██████████ may have violated RCW 42.52.160(1) by using state resources, including state facilities, tools and equipment to store and work on his personal vehicles, using his state vehicle for personal purposes, and using his state computer, SCAN number and cellular telephone for personal use.

2. ██████████ is a former Maintenance Supervisor at the Port Orchard Department of Transportation (DOT) office. ██████████ was employed by DOT from August 1984 to June 25, 2001, when he indicated he was resigning his position due to family commitments.

3. [REDACTED] duties as the Maintenance Supervisor included planning, scheduling and supervising several crews involved in maintenance of state highways and other department controlled transportation features. He was also responsible for ensuring that department equipment, facilities, tools and personnel were utilized effectively and their usage was limited to official business purposes.

4. Upon receiving the SAO report, the DOT conducted an independent investigation of the assertions against [REDACTED]. Both investigations revealed that:

- a. [REDACTED] used the DOT Port Orchard equipment shop during working and non-working hours to work on his personal vehicles. The work included cleaning and painting parts during the winter of 1996-1997 and using the shop to perform work on his personal vehicle during 1999. [REDACTED] stored a personal vehicle in the Port Orchard wash bay for approximately two weeks.
- b. [REDACTED] used the state vehicle to conduct non-state business. In May or June 2000, [REDACTED] transported privately owned propane tanks in the state pick-up truck assigned to him. In 1998-1999, [REDACTED] directed subordinates to follow him home and assist him with loading personal property (a used engine block) into the bed of [REDACTED] assigned state truck. This property was disposed of at the state-owned Belfair pit site.
- c. During May 1998 through July 2000, [REDACTED] sent 138 personal e-mail messages. [REDACTED] asserts that some of these e-mail messages were transmitted during non-working hours.
- d. During June 1999 to May 2000, [REDACTED] made extensive personal telephone calls using the state provided SCAN long distance number. From January 1999 through April 2000, [REDACTED] placed extensive personal telephone calls using the state provided cellular phone. [REDACTED] asserts that many of these calls were to his friend in Olympia, who was also the procurement clerk for the office and were business related. Other calls were to citizens that had complaints, or for example, were registered owners of vehicles located on a roadway.
- e. [REDACTED] occasionally removed state equipment and property for personal use. These instances are:
  1. During 1998, [REDACTED] requested the state order a Ford truck bench seat to replace a seat in a state vehicle. The truck seat was installed in [REDACTED] personal vehicle.

2. In approximately July 1998, [REDACTED] had the state-owned pressure washer at home.
3. In approximately April 1999, [REDACTED] had the state-owned plasma cutter at his home.

5. Board staff and the respondent reviewed the telephone call listing provided in the SAO working papers. That review revealed that the total cost of verified personal calls on SCAN and the cellular phone totaled \$383.68. The majority [REDACTED] telephone calls were very short in duration; however approximately 2.5 hours of telephone calls were for extended personal conversations. This cost the state approximately \$80.00 in work time.

6. [REDACTED] attended Ethics Standards training in February 1995 and Ethics Refresher training in December 2000.

7. On June 25, 2001, in a settlement agreement between [REDACTED] and DOT, DOT agreed to: a) not disclose the reasons leading to [REDACTED] resignation unless required by state or federal law; b) remove specific documents from [REDACTED] personnel file; c) not contest his claim for unemployment insurance; and d) allow [REDACTED] to cash out all accumulated vacation leave and compensatory time.

8. In the settlement agreement, [REDACTED] agreed to: a) voluntarily resign his position as Maintenance Supervisor; b) not file any claims, suits or appeals against the department in relationship to the termination of employment; and c) return all DOT tools, keys, equipment and other state-owned property currently in his possession.

#### **B. APPLICABLE LAW**

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 AND MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed criteria in WAC 292-120-030. In the case at hand: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)).

2. It is a mitigating factor that [REDACTED] resigned his DOT position (WAC 292-190-030(4)(a)).

### D. RESOLUTION

1. [REDACTED] admits that he violated provisions of RCW 42.52.160 when he used state facilities, tools and equipment to store and work on his personal vehicles, used his state vehicle for personal purposes, and when he used his state computer, SCAN number and cellular telephone for personal use.

2. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). [REDACTED] [REDACTED] also agrees to reimburse the State of Washington \$463.68 for the costs of his personal telephone calls and the 2.5 working hours expended on the personal telephone calls. The Board agrees to suspend one thousand dollars (\$1,000.00) 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.

3. The civil penalty in the amount of one thousand five hundred dollars (\$1,500.00), is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in ten (10) equal installments of one hundred fifty dollars (\$150.00) with the first payment due on September 30, 2003, and the last day of each month thereafter. Reimbursement in the amount of

\$463.68 is payable to the State of Washington Department of Transportation within forty-five (45) days of approval of this Stipulation and Order by the Board. Failure to make timely payments will cause the entire amount of the civil penalty to become due and payable within ten (10) days of the missed payment.

**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) which 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 owed in the amount of \$1,500.00 and compliance with all other conditions of this Stipulation. [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 Washington State Executive Ethics Board, the State of Washington, or other third party, which 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.

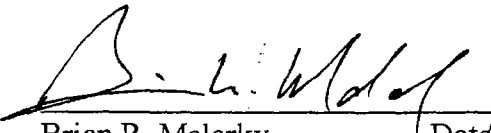
4. If this Stipulation and Order is not accepted, it shall be null and void, and may not be used for any purpose in connection with the above-entitled action.

**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:

  
Date July 28, 2003  
Brian R. Malarky  
Executive Director

