

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 01-90

STIPULATION AND ORDER

THIS STIPULATION is entered into under WAC 292-100-090 between the 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.

I. STIPULATION

A. FACTS

1. On September 17, 2001, the Public Disclosure Commission referred a complaint to the Executive Ethics Board alleging that ██████████ a Western Washington University (WWU) employee, may have violated RCW 42.17.130 by using a WWU email account to assist the campaign of Mr. Warner for Commissioner, Port of Bellingham.

2. ██████████ is an employee of WWU and subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360. ██████████ is the Assistant to the Executive Director/Data Manager for WWU. ██████████ also served as Mr. Warner's campaign manager. There was not a supervisory relationship between ██████████ and Mr. Warner.

3. On January 16, 2002, the State Auditor's Office (SAO) issued a Report of Whistleblower Investigation regarding improper governmental action at WWU. The SAO

investigation report indicated that [REDACTED] used state resources for the purpose of assisting with Mr. Warner's campaign for Port Commissioner.

4. The SAO review of [REDACTED] email indicated she received eight email messages relating to the political campaign between July 11 and 23 and had deleted an additional eight campaign-related messages. In addition, there was one item in her email in-box relating to the campaign.

5. The Board staff review of the SAO working papers revealed that between July 11, 2001 and August 4, 2001 [REDACTED] used a University computer and e-mail account to send at least 23 email messages that were related to the Warner campaign. In addition, the evidence indicates that [REDACTED] received at least 16 email messages related to the Warner campaign. Sixteen of the messages were sent to her as part ongoing exchanges with Mr. Warner regarding his campaign for public office. These emails addressed campaign topics such as potlucks/kickoffs, brochure drafting, contacts and volunteer support, publicity/press releases, campaign name tags, port issues, excel spreadsheets of mailing lists (including comments regarding "looking up the Western folks").

6. [REDACTED] asserts that she discontinued using a University computer and email account to support the Warner campaign in early September 2001 so after a news story regarding the use of email for campaign purposes was printed in the Bellingham Herald. Since the SAO auditor's report only addressed emails sent between July and early August, Board staff can not verify this assertion.

7. On December 14, 2001, [REDACTED] received a formal letter of reprimand from her supervisor. The letter was issued in response to the SAO findings and represents disciplinary action in this matter but does not involve a loss of salary or benefits.

B. APPLICABLE LAW

1. RCW 42.52.180(1) states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency. [Emphasis added.]

2. "Facilities of an agency" include the state owned and operated e-mail system and the agency computers and other equipment upon which the e-mail system operates. RCW 42.52.180(1); WAC 292-110-030(1).

3. WAC 292-110-010(3) allows state officers to make occasional but limited personal use of state resources in certain limited circumstances. WAC 292-110-010(4)(c), however, prohibits even an "occasional and limited" use of state resources if that use is for "any campaign or political" purpose.

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 the violation reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)).

2. As mitigating factors, [REDACTED] received a letter of reprimand from her supervisor on December 14, 2001 that will remain in her personnel file for three years. This letter did not result in any monetary sanction against [REDACTED]. In addition, [REDACTED] attended ethics training on February 8, 2002.

D. RESOLUTION

1. [REDACTED] admits that she violated provisions of chapter 42.52.180 RCW by:
 - a) using her state computer to promote Mr. Warner's campaign for Bellingham Port Commissioner; and
 - b) using her state computer to send and/or receive emails related to campaign related issues;

2. Recognizing that she is personally responsible for her conduct, [REDACTED] agrees to pay a civil penalty in the amount of ^{Seven hundred & fifty 750} ~~one thousand dollars~~ (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) of this amount on the condition that [REDACTED] [REDACTED] complies with all the terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW for a period of three years.

3. The civil penalty ^{250.00} (~~\$500.00~~) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in five (5) equal installments of ~~one hundred dollars~~ (~~\$100.00~~) with the first payment due on September 30, 2002, and the 30th day of each month thereafter

III. 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

IV. 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 ~~\$500~~ ^{\$250} 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.

V. 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]

8/30/02
Date

Stipulated to and presented by:

Brian R. Malarky
Brian R. Malarky
Executive Director

30 Aug 02
Date

VI. 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 following modifications are approved by _____

D. 2. Civil penalty in the amount of \$750, \$500 suspended

D. 3. The civil penalty of \$250 is payable (remainder of sentence in five equal installments with

the first payment due (remainder of sentence the same

IV. 1. \$250 civil penalty

DATED this 13th day of September, 2002.

Laquita Fields, Chair

Marilee Scarbrough

Marilee Scarbrough, Vice-Chair

James M. Vaché

James M. Vaché, Member

Sutapa Basu

Sutapa Basu, Member

Paul Zellinsky

Paul Zellinsky, Member

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



10/7/02

Date