

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

████████████████████

Respondent.

NO. 02-09

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 January 8, 2002, the State Auditor’s Office (SAO) referred the final report of Whistleblower Case No. 02-038 to the Executive Ethics Board.

2. ██████████ Ph.D., is an employee of Central Washington University (CWU) subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360. ██████████ is the Director of the McNair Scholars Program at CWU, a federally-funded position, which is prohibited from lobbying by federal regulations.

3. In December 2000, ██████████ initiated a lobbying campaign to enact federal legislation to forgive student loans for TRIO employees. TRIO programs are educational opportunity outreach programs under the U.S. Department of Education and are designed to motivate and support students from disadvantaged backgrounds. The McNair Scholars Program is one of the TRIO programs. If legislation were to be enacted to forgive student loans for TRIO

employees, ██████████ would benefit from it by not being required to pay the balance of his TRIO student loan.

4. Between May 23, 2001 and October 17, 2001, ██████████ used his state owned computer at CWU to send e-mails relating to the loan forgiveness campaign. The e-mails were sent during work hours, and his work telephone and fax numbers were listed as contact information. ██████████ also received responses to his e-mails relating to the loan forgiveness campaign on his work computer.

5. On June 19, 2001, ██████████ sent a letter to Senator Maria Cantwell asking for support of the loan forgiveness campaign. The letter was typed on his work computer, he signed the letter as the Director of the McNair Scholars Program at CWU, and listed his work phone and fax numbers and his e-mail address at the college as contact information.

6. On August 20, 2001, ██████████ sent a draft letter to approximately 2,200 subscribers listed on TRIO Listserv. The letter was designed to be personalized by the recipients and then sent to members of Congress urging support of legislation to forgive a particular category of student loans. The letter was drafted by ██████████ on his work computer, and sent to the 2,200 e-mail recipients from his work computer.

7. ██████████ received ethics training in the Spring of 2001.

8. ██████████ has not been disciplined by CWU for his conduct.

B. APPLICABLE LAW

1. 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.

2. RCW 42.17.190(2) states:

Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying: PROVIDED, This does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for

legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties:

3. WAC 292-110-010(6) states in pertinent part:

Prohibited uses. The State Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources.

. . .

(c) -Any use 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. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

(d) -Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. . .

(e) -Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy. . . .

4. "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.

5. 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(6), however, prohibits even an "occasional and limited" use of state resources if that use is for lobbying or is prohibited by state or federal law or regulation.

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. In addition, it is an aggravating factor that [REDACTED] has incurred no other sanctions as a result of the violations (WAC 292-120-030(3)(f).

3. There are no mitigating factors.

D. RESOLUTION

1. [REDACTED] admits that he violated provisions of RCW 42.52.160 by:

a) -using his state computer to draft letters to members of Congress urging support for his campaign relating to loan forgiveness;

b) -using his state computer to send e-mail to over 2,200 recipients relating to loan forgiveness; and

c) -using state resources for private gain.

2. [REDACTED] admits that he violated provisions of RCW 42.17.190 by initiating a lobbying campaign to enact federal legislation to forgive student loans for TRIO employees.

3. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Board agrees to suspend ^{\$ 1,000} ~~five hundred dollars (\$500.00)~~ of this amount on the condition that [REDACTED] complies with all the terms and conditions of this Stipulation and Order and commits no further violations of Chapter 42.52 RCW while he is employed by the State of Washington.

4. The civil penalty in the amount of ^{five hundred} ~~one thousand~~ ^{\$ 500} ~~dollars (\$1,000.00)~~ is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in six (6) equal installments of ~~one hundred and fifty dollars (\$150.00)~~ with the first payment due on September 30, 2002, and the 30th day of each month thereafter; and a final payment of ~~one hundred dollars (\$100.00)~~ due by March 30, 2003. 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.

II. 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.

III. RELEASE / EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] [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~~1,000.00~~ and compliance with all other conditions of this Stipulation. [REDACTED] [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.

IV. 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.



8/28/02
Date

Stipulated to and presented by:

Brian R. Malarky
Brian R. Malarky
Executive Director

28 Aug 02
Date

V. 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:

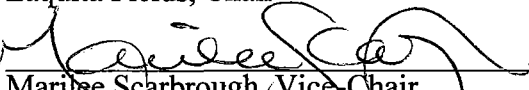
D. 3. Suspend \$1,000

D. 4. \$500 civil penalty is payable in 6 installments

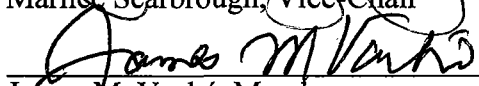
III. 1. \$500 civil penalty

DATED this 13th day of September, 2002.

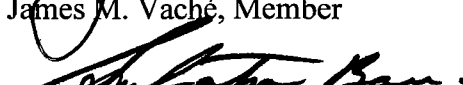
Laquita Fields, Chair



Marilee Scarbrough, Vice-Chair



James M. Vaché, Member



Sutapa Basu, Member



Paul Zellinsky, Member

* I, _____, accept/do not accept (circle one) the proposed modification.

Respondent

Date

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D. 3. Suspend \$1,000

D. 4. \$500 civil penalty is payable in 6 installments

III. 1. \$500 civil penalty

DATED this 13th day of September, 2002.

Laquita Fields, Chair

[Signature]

Marilee Scarbrough, Vice-Chair

[Signature]

James M. Vaché, Member

[Signature]

Sutapa Basu, Member

[Signature]

Paul Zellinsky, Member

* I, _____
proposed m

(accept) do not accept (circle one) the
10/7/02

Respondent

Date