

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 02-14

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] 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 April 22, 2002, the Executive Ethics Board received a complaint alleging that [REDACTED] an employee of the State of Washington, Department of Social and Health Services (DSHS), was using state resources to send and receive personal email.

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. [REDACTED] 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. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude [REDACTED] 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. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] 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, [REDACTED] 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, Medical Assistance Administration (MAA) Division, employed [REDACTED]

2.2. On March 17, 2003, the Board referred the investigation of this case to DSHS pursuant to WAC 292-100-042. DSHS provided their initial report regarding this matter on June 27, 2003. DSHS supplemented their report with their working papers on August 22, 2003.

2.3. Due to records retention issues, DSHS was unable to retrieve e-mails that [REDACTED] sent or received prior April 2003. Review of computer records from April 2003 through June 2003, revealed that her state computer contained 92 e-mails sent or received during that 90-day period; of those, about 41 contained personal content. [REDACTED] received jokes from other DSHS employees. [REDACTED] then forwarded the e-mails containing jokes to her home e-mail account and to other DSHS employees. The e-mails

were not brief. [REDACTED] did not compose the e-mails, she forwarded them on to other employees.

2.4. As a result of this behavior, DSHS counseled [REDACTED] on the appropriate use of e-mail and provided training regarding DSHS Administrative Policy No. 15.15.

2.5. DSHS Policy No. 15.15 addresses the "Use of Electronic Messaging Systems and the Internet." This Policy prohibits using state electronic message systems or the Internet for personal business, personal interest, or any other non-DSHS business use.

### **Section 3: CONCLUSIONS OF LAW**

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 to 2.4, [REDACTED] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy. The e-mails sent were not brief and [REDACTED] sent them to other state employees disrupting them and causing the other employees to make personal use of state resources; thus her use did not meet the de minimus standards.

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 a mitigating factor that [REDACTED] [REDACTED] received counseling regarding the appropriate use of e-mail and training on DSHS Administrative Policy 15.15. (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] [REDACTED]s will also pay a civil penalty in the amount of three hundred dollars (\$300.00). The Board agrees to suspend the entire 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.

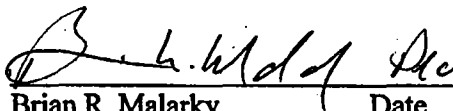
**CERTIFICATION**

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:

  
Date Dec 4, 2003  
Brian R. Malarky  
Executive Director

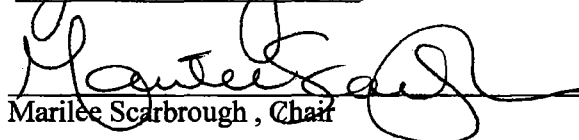
**II. ORDER**

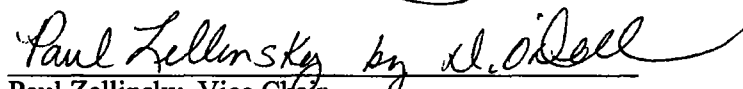
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

\_\_\_\_\_ 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):

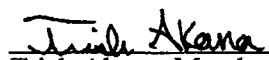
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 12 day of January, 2004.

  
Marilee Scarbrough, Chair

  
Paul Zellinsky, Vice Chair

\_\_\_\_\_  
James M. Vaché, Member

  
Trish Akana, Member

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

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