

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 02-52

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 October 7, 2002 the State Auditor's Office (SAO) referred the final report of Whistleblower Case No. 02-065 to the Executive Ethics Board. The referral alleged that ██████████ may have violated RCW 42.52.160(1) and RCW 42.52.020 by using state resources, including a state office, computer, printer, voicemail, phone, e-mail and Internet service for the private benefit or gain of an outside business.

2. The Respondent, ██████████ is a former professor and Associate Dean for the Business Administration Division of Shoreline Community College (SCC) and during all times relevant to the allegations against him was subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360. He was employed by the SCC from approximately January 1990 to September 2002.

3. ██████████ is licensed to practice law in Washington State.

4. The SAO investigation indicated that [REDACTED] was involved in developing the SCC's Acceptable Use Policy 4126 addressing the private use of the school's resources. [REDACTED] also attended "Ethics is for Everyone" training on May 21, 1999.

5. As part of the SAO investigation, the SCC did the actual review of [REDACTED] computer. This method of review was prompted by [REDACTED] position as a professor with the SCC and the fact that he had student information protected under the Family Educational Rights Privacy Act (FERPA) on his computer. The SAO itself reviewed [REDACTED] Internet use.

6. SCC's review of [REDACTED] Word documents and Excel spreadsheet documents found one document related to his outside work as an attorney. In addition, a review of [REDACTED] e-mail from April 25 through July 25, 2002, revealed 13 e-mails that contained information related to his search for attorney employment during the summer months of 2002 when he was not teaching college courses.

7. During the SAO review, they discovered that [REDACTED] accessed the Internet through his SCC computer. The SAO found 71,715 graphic images and movies that contained adult-oriented material on [REDACTED] computer.

8. On December 14, 2001, [REDACTED] was verbally warned by his supervisor and the Director of Computer Systems and Networking regarding unauthorized use of his state computer. This verbal warning came as a result of another college employee observing [REDACTED] using his office computer to view adult materials. [REDACTED] was told to "cease and desist" his inappropriate use of state resources. [REDACTED] acknowledged the warning and agreed to cease the inappropriate use of the state computer.

9. The SAO review showed that despite this warning and [REDACTED] agreement, he continued to use SCC resources to view adult-oriented material for at least the next seven months.

10. [REDACTED] admits that he accessed numerous adult-oriented Internet websites and downloaded adult-oriented material using his state computer. [REDACTED] admits that he continued to access the prohibited material even after he was warned not to use state resources in this manner.

11. During the SAO investigation, ██████ resigned from his tenured faculty position at SCC effective September 30, 2002.

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. Shoreline Community College's policy addressing the private use of state resources states:

The following types of activities including but not limited to the activities below are examples of behaviors using information technology resources (ITRs) that are unethical and unacceptable, and in some case may violate state or federal law....

Using the College systems for non-college work, including but not limited to commercial or profit-making purposes without written authorization from the College administration.

Surfing the Internet for personal use.

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)). In addition, it is an aggravating factor that ██████ was involved in developing the College's Acceptable Use Policy 4126 and attended "Ethics is for Everyone" training (WAC 292-120-030(3)(d)). It is also an aggravating factor that ██████ intentionally committed the violations with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)). It is a mitigating factor that ██████ resigned his position in lieu of termination, thus also losing his tenure status and state benefits, (WAC 292-120-040(4)(a)).

D. RESOLUTION

1. [REDACTED] admits that he violated provisions of RCW 42.52.160 when he extensively used his state computer to access 71,715 graphic images and movies that contained adult-oriented material
2. [REDACTED] admits that he violated provisions of RCW 42.52.160(1) and RCW 42.52.120 by using state resources to seek summer employment as a private attorney.
3. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of twenty thousand dollars (\$20,000.00) and investigative costs in the amount of four thousand dollars (\$4,000.00) to be paid to Shoreline Community College. The payment of investigation costs shall not reduce the penalty amount owed. The Board agrees to suspend five thousand dollars (\$5,000.00) 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.
4. The civil penalty of \$15,000.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.
5. The investigative cost of \$4,000.00 is payable to Shoreline Community College.

II. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and 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] 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 \$20,000.00 (\$5,000 suspended in accordance with the terms set out above) and investigative costs in the amount of \$4,000.00 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. The civil penalty in the amount of fifteen thousand dollars (\$15,000.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in twenty-four (24) equal installments of six hundred twenty five dollars (\$625.00) with the first payment due on October 25, 2003, and the 25th day of each month thereafter. 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.

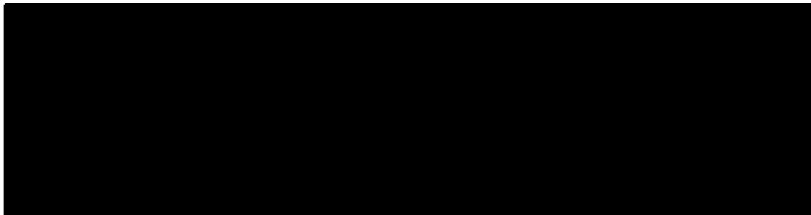
3. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

5. 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.



Stipulated to and presented by:

B. R. Malarky Sep 18, 2003
Brian R. Malarky Date
Executive Director

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

- X 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 10th day of October, 2003.



James M. Vaché, Chair



Marilee Scarbrough, Vice Chair



Laquita Fields, Member



Paul Zellinsky, Member

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

[REDACTED] Respondent _____ Date _____