

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 05-032

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 May 18, 2005 the Executive Ethics Board received a referral from the Washington State Parks and Recreation Commission (Parks) alleging that ██████████ an employee of Parks used a state computer to view Internet sites not related to his official duties. The Board reviewed this referral and initiated a complaint on June 10, 2005.

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. ██████████ 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. ██████████ recognizes that the evidence available to the Board staff is such that the Board may conclude ██████████ 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. ██████████ waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 ██████████ ██████████ 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. ██████████ 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 ██████████ 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, Parks, employed [REDACTED] as a Construction and Maintenance Project Specialist 1.

2.2. Parks conducted an investigation based on allegations of misuse of a state computer. The Lake Easton Maintenance Shop computer was used in September 2004 to view 541 nudist/naturalist and 2 pornographic images. The nudist/naturalist image portrayed nude images of both adults and children engaged in normal non-sexual activities. The images were accessed on September 16, 17, 22, 27, 28 and 30, 2004. The length of time involved for the different viewing dates varied from 1 minute to approximately 6 hours.

2.3. [REDACTED] used both his own computer account and the "Park admin" account to view nudist sites containing "pictures of families, kids, teenagers, mothers, fathers and grandparents." [REDACTED] spent at least 15-20 hours in September 2004 viewing nudist sites on the state-owned computer.

2.4. [REDACTED] attended ethics training on June 3, 2003 and September 25, 2003.

2.5. Agency Policy No. 15-19 states in part:

Employees shall access the Internet only to conduct business of the state in a manner that advances the public's interest. ...

Internet access may not be used for personal gain, private advantage, support unlawful activities, or violate state or federal laws. Inappropriate use of State Parks Internet access may result in disciplinary action.

2.6. Using the state computer to view nudist sites is a violation of Policy 70-15, Maintaining Ethical Standards, Policy 15-19 Internet Connectivity and use and the State Ethics in Public Service Act. Parks Policy 15-19 does **not** allow any de minimis personal use of the internet.

2.7. On May 13, 2005, Parks issued a disciplinary letter to [REDACTED] reducing his salary for three months from \$3,134 per month to \$2,841 per month, resulting in an income loss of \$879.00.

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. Based on Findings of Fact 2.1 through 2.4, [REDACTED] used state resources in violation of RCW 42.52.160 when he accessed Internet websites that were not related to his official duties.

3.5. 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 92-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an aggravating factor that [REDACTED] had attended two ethics trainings before committing this violation and that the majority of the use occurred after 4:45 p.m. when other employees had

left the office. It is a mitigating factor that [REDACTED] received a reduction in salary from Parks for three months regarding his conduct (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

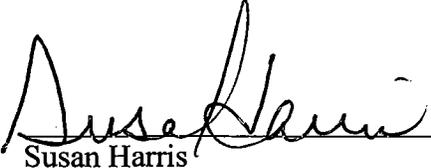
4.1. [REDACTED] will pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The civil penalty due in the amount of two thousand dollars (\$2,000.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in four (4) equal installments of five hundred dollars (\$500.00) with the first payment due within thirty (30) days after this Order is accepted by the Board and served on the parties. Successive payments due quarterly, thereafter, until the full two thousand dollars (\$2,000.00) is paid. 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.

CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

[REDACTED]

Stipulated to and presented by:

 10/12/06
Susan Harris Date
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 13 day of October, 2006.

Trish Akana
Trish Akana, Chair

Evelyn Yenson
Evelyn Yenson, Vice Chair

Judy Golberg
Judy Golberg, Member

Neil Gorrell
Neil Gorrell, Member

Kyle Usrey
Kyle Usrey, Member

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

[REDACTED] Respondent _____ Date