

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 05-041

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 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 April 26, 2005, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that [REDACTED] an employee of the State of Washington, Department of Social and Health Services (DSHS), may have violated state law when she used state resources, including the state computer, Internet, time and e-mail for non-work related purposes. The Board reviewed this referral and issued a complaint on January 13, 2006.

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 she 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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, [REDACTED] was employed by the State of Washington, DSHS. [REDACTED] was a Program Manger in the Office of Development and Training in Olympia. She is now a Social Worker with the Division of Children's Administration of DSHS.

2.2. The SAO review of [REDACTED] computer revealed that [REDACTED] joined an on-line dating service. Her computer contained e-mails exchanges with prospective dates associated with the dating service. [REDACTED] admitted that she accessed the dating website from her state computer. [REDACTED] computer contained the photo of her supervisor that was submitted to the dating service. [REDACTED] stated that her supervisor directed her to submit the photo to the dating service using her state computer.

2.3. [REDACTED] computer contained documents pertaining to obtaining ordination as a minister. [REDACTED] indicated that she obtained the ordination certificate so she could officiate at the wedding of her supervisor. [REDACTED] accessed the ordination website from her home. When

she received notification that she had been ordained, she sent the e-mail to her work computer so she could print the message at work. [REDACTED] also prepared the wedding vows using her state computer. [REDACTED] asserts that she did this at the direction of her supervisor.

2.4. The SAO reviewed [REDACTED] Internet access and found websites accessed by [REDACTED] that were not related to her official duties. These websites included ACU Radio, travel, hotels, florists, songs, medical issues, and schedules of college classes. [REDACTED] admitted to the SAO that she accessed these websites and they were not for work-related matters.

2.5. Pictures found on [REDACTED] computer included a picture of someone she dated, pictures of her family, and pictures of houses and real estate.

2.6. [REDACTED] computer also contained approximately 30 personal e-mails she sent to various individuals. Included in the 30 personal e-mails was a conversation that she held on August 20, 2003 with an individual in which she sent 16 e-mails during a period from 1:09 p.m. until 2:19 p.m.

2.7. DSHS Administrative Policy No. 15.15 addresses the use of electronic messaging systems and the Internet. That policy states in part:

Employee Use of Electronic Messaging Systems and the Internet

Personal Use of Electronic Messaging Systems. WAC 292-110-010, Use of State Resources states that department employees may make occasional but limited personal use of state resources if:

- a. There is little or no cost to the state.
- b. The use of state resources does not interfere with the performance of the employee's official duties;
- c. The use is occasional and brief in duration; and
- d. The use does not compromise the security or integrity of state information or software.

3. **Prohibited Uses are as Follows: . . .**

- b. Employees shall not access the Internet for personal business, personal interest (e.g. "surfing") or any other non-DSHS business use. This includes accessing computer networks or other databases including, but not limited to, e-mail and electronic bulletin boards. The limited use provisions discussed in Section 2 above, do not apply to using

the Internet. . . .

- d. Employees shall not use e-mail products other than those provided and supported by the department. The prohibited products include (but are not limited to) Hotmail, Juno, and AOL. checking personal e-mail using department networks and communication lines is also prohibited because of the risk of compromising the security and integrity of state information and software.
- e. Employees shall not create, forward or store electronic messages that do not pertain to the state's business except as allowed in B.2. This includes (but is not limited to) hoaxes, hypes, chain letters, and spamming messages.

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.

3.4. 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."

3.5. The Ethics in Public Service Act allows for *de minimis* 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. [REDACTED] use of state resources, when viewed collectively over a 10 month period went beyond the *de minimis* standard.

3.6. Based on Findings of Fact 2.1 through 2.7, [REDACTED] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy.

3.7. 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.

Section 4: AGREED ORDER

4.1. For the violation of RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of seven hundred fifty dollars (\$750.00). The civil penalty of \$750.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

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

Date

Stipulated to and presented by:


Susan Harris
Executive Director

8/15/06
Date

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

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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 8th day of Sept, 2006.

Trish Akana
Trish Akana, Chair

Evelyn Yenson
Evelyn Yenson, Vice-Chair

Judith K. Golberg
Judith Golberg, Member

Paul Zellinsky
Paul Zellinsky, Member

Neil Gorrell
Neil Gorrell, Member

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

 Respondent Date