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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

[REDACTED]

Respondent.

NO. 07-007

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 MELANIE DE LEON, 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. A Whistleblower complaint was received by the State Auditor's Office (SAO) on or about January 9, 2005. The SAO investigated the allegations made in the complaint and concluded that reasonable cause existed to believe that [REDACTED] used his state computer for personal activities in violation of RCW 42.52.160, *Use of persons, money, or property for*

1 *private gain*. The SAO referred the Report of Whistleblower Investigation to the Board on or
2 about August 10, 2006.

3 1.2. Board staff reviewed the SAO working papers, and on September 8, 2006,
4 based on staff's preliminary investigation, the Board initiated a complaint to consider whether
5 [REDACTED] used state resources for personal benefit.

6 1.3. Board staff conducted an investigation, and on November 14, 2008, the Board
7 found reasonable cause to believe [REDACTED] may have violated one or more provisions of
8 RCW 42.52, the Ethics in Public Service Act, and/or WAC 292-110-010.

9 1.4. The Board is authorized under RCW 34.05.060 to establish procedures for
10 attempting and executing informal settlement of matters in lieu of more formal proceedings
11 under the Administrative Procedures Act, including adjudicative hearings. The Board has
12 established such procedures under WAC 292-100-090.

13 1.5. [REDACTED] understands that if Board staff proves any or all of the alleged
14 violations at a hearing, the Board may impose sanctions, including a civil penalty under
15 RCW 42.52.480(1)(b) of up to \$5,000 for each violation found, or the greater of three times the
16 economic value of anything received or sought in violation of chapter 42.52 RCW. The Board
17 may also order the payment of costs, including reasonable investigative costs, under
18 RCW 42.52.480(1)(c).

19 1.6. [REDACTED] recognizes that the evidence available to the Board staff is such
20 that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the
21 interest of seeking an informal and expeditious resolution of this matter, the parties agree to
22 entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

23 1.7. [REDACTED] waives the opportunity for a hearing, contingent upon
24 acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by
25 the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:
26

1 The board has the option of accepting, rejecting, or modifying the
2 proposed stipulation or asking for additional facts to be presented. If the
3 board accepts the stipulation or modifies the stipulation with the
4 agreement of respondent, the board shall enter an order in conformity
5 with the terms of the stipulation. If the board rejects the stipulation or
6 respondent does not agree to the board's proposed modification to the
7 stipulation, the normal process will continue. The proposed stipulation
8 and information obtained during formal settlement discussion shall not
9 be admitted into evidence at a subsequent public hearing.

10 1.8. If the Board accepts this stipulation, the Board will release and discharge
11 [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters
12 arising out of the facts contained in the complaint in this matter, subject to payment of the full
13 amount of the civil penalty due and owing, any other costs imposed, and compliance with all
14 other terms and conditions of the agreed order. [REDACTED] in turn agrees to release and
15 discharge the Board, its officers, agents and employees from all claims, damages, and causes of
16 action arising out of this complaint and this Stipulation and Agreed Order.

17 1.9. If this Stipulation is accepted, this Stipulation and Order does not purport to
18 settle any other claims between [REDACTED] and the Washington State Executive Ethics
19 Board, the State of Washington, or other third party, which may be filed in the future.

20 1.10. If this Stipulation is accepted, this Stipulation and Order is enforceable under
21 RCW 34.05.578 and any other applicable statutes or rules.

22 1.11. If the Board rejects this Stipulation, or if [REDACTED] does not accept the
23 Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at
24 any subsequent hearing by any Board member to whom this Stipulation was presented for
25 approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that if this
26 proposed Stipulation, with any applicable modification by the Board, is rejected by [REDACTED]
[REDACTED] this 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.

1 **Section 2: Findings Of Fact**

2 2.1. At all times material hereto, [REDACTED] was employed by the state
3 Department of Social and Health Services (DSHS) as an Information Technologist 5.

4 2.2. In August 2006, the SAO found reasonable cause to believe that [REDACTED]
5 [REDACTED] used state resources for personal benefit in violation of RCW 42.52. The specific
6 findings included that [REDACTED] used his state-issued laptop computer to send and receive
7 personal email; to store more than 900 personal pictures and 800 music files; and to visit non-
8 work-related Internet sites, including adult-oriented sites. The SAO also found that [REDACTED]
9 [REDACTED] installed, on his state computer, several unauthorized software programs one of which
10 was designed to erase all traces of Internet usage.

11 2.3. On September 8, 2008, Board staff delivered eight computer disks to Jesse
12 Regalado who is a certified computer forensics examiner. Board staff had earlier obtained
13 these disks from the SAO and they contained an image of [REDACTED] state computer.
14 Board staff contracted with Mr. Regalado to examine the contents of [REDACTED] computer
15 and to identify all images that did not relate to [REDACTED] employment with DSHS as an
16 Information Technologist.

17 2.4. On October 6, 2008, Board staff received the results of Mr. Regalado's
18 examination of [REDACTED] state computer. The forensics examination revealed more
19 than 8,000 images, the majority of which were not work-related, including images of
20 vacations, family pictures, nude and partially nude males and females, body organs, and
21 individuals engaged in sexual intercourse.

22 2.5. Based upon the results of the forensic examination, on November 14, 2008, the
23 Executive Ethics Board found reasonable cause to believe that [REDACTED] committed a
24 violation or violations of RCW 42.52.160, and/or WAC 292-110-020.
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1 **Section 3: Conclusions Of Law**

2 3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
3 over [REDACTED] and over the subject matter of this complaint.

4 3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
5 matter under the terms contained herein, subject to Board approval.

6 3.3. The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees
7 from using state resources for private benefit. RCW 42.52.160(1) states:

8 No state officer or state employee may employ or use any person,
9 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.

10 WAC 292-110-010(3) allows state employees to make occasional but limited use of state
11 resources under certain circumstances, provided that all of the following conditions are met: (a)
12 there is little or no cost to the state; (b) any use is brief in duration, occurs infrequently and is the
13 most effective use of time or resources; (c) the use does not interfere with the performance of the
14 officer's or employee's official duties; (d) the use does not disrupt or distract from the conduct of
15 state business due to volume or frequency; (e) the use does not disrupt other state employees and
16 does not obligate them to make a personal use of state resources; and (f) the use does not
17 compromise the security or integrity of state property, information, or software.

18 [REDACTED] violated RCW 42.52.160(1) and WAC 292-110-010(3) when he used
19 his state computer to send and receive emails, obtain and store thousands of images, none of
20 which were related to DSHS business, and when he used his state computer to access non-
21 work-related Internet websites.

22 3.4. Based on Findings of Fact 2.1 through 2.4, [REDACTED] used state resources
23 in violation of RCW 42.52.160 and WAC 292-110-010.

1 3.5. The Board is authorized to impose sanctions for violations of the Ethics Act
2 pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for
3 imposing sanctions and consideration of any mitigating or aggravating factors.
4

5 **Section 4: Aggravating Factors**

6 In determining the appropriateness of the civil penalty, the criteria in
7 WAC 292-120-030 has been reviewed. It is an aggravating factor that [REDACTED]
8 installed on his state computer a software program designed to erase all traces of his Internet
9 usage. This demonstrates that [REDACTED] knew his use of the state computer was
10 inappropriate.

11 **II. AGREED ORDER**

12 [REDACTED] will pay a civil penalty in the amount of six thousand five hundred
13 dollars (\$6,500.00) which includes two thousand dollars (\$2,000.00) in investigative costs.
14 [REDACTED] will make payments to the Executive Ethics Board in the amount of one
15 hundred dollars (\$100.00) per month until the civil penalty in the amount of six thousand five
16 hundred dollars (\$6,500.00) is paid in full. Payments are due to be received by the AGO Fiscal
17 Office on or before the 15 day of each month. If any monthly payment is received by the
18 AGO Fiscal Office more than five (5) calendar days past the 15 of the month, the Board
19 reserves the right to demand immediate payment in full of the entire remaining outstanding
20 balance.
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CERTIFICATION

I [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that this Stipulation 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 this Stipulation and Agreed Order, I understand that I will receive a signed copy.

[REDACTED] 5-28-09
Date
Respondent

C. James Frush 5/28/09
C. JAMES FRUSH Date
Attorney for Respondent

Stipulated to and presented by:
Melanie De Leon 6/3/09
MELANIE DE LEON Date
Executive Director

1 **IV. ORDER**

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

4 Stipulation is:

- 5 ACCEPTED in its entirety;
6 REJECTED in its entirety;
7 MODIFIED. This Stipulation will become the Order of the Board if the

8 Respondent approves* the following modification(s):
9 _____
10 _____

11 DATED this 10th day of June, 2009.

12 
13 _____
14 NEIL GORRELL, Chair

15 
16 _____
17 LINNAEA JABLONSKI, Vice-Chair

18 
19 _____
20 JUDITH K. GOLBERG, Member

21 
22 _____
23 MICHAEL F. CONNELLY, Member

24 
25 _____
26 MARTIN BIEGELMAN, Member

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

Respondent Date