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EXECUTIVE  
ETHICS BOARD

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

David Clark

Respondent.

No. 2016-061

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DAVID CLARK, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On August 11, 2016, the Executive Ethics Board (Board) received a referral from the Employment Security Department (ESD) alleging that David Clark (Mr. Clark), Work Source Specialist 3 at ESD, may have violated the Ethics in Public Service Act by using state computer resources for his private benefit and gain.

2. In March of 2016, ESD Human Resource Office (HR) received information indicating that Mr. Clark spent an excessive amount of time on the internet for non-work related use.

3. The ESD search focused on the period of March 1 through April 13, 2016. The search showed that Mr. Clark used his state owned computer during work hours to view news and entertainment websites.

4. Mr. Clark admitted to HR investigators that he used state time and his state computer to access news sites, restaurants menus, and that he downloaded pictures. Mr. Clark told the HR investigator that when work in the office was slow he got bored and would browse the news sites to fill in the time. Mr. Clark further stated that he was a “news junky” but that he has never “blown off” work to read the news and work was his priority.

5. On August 10, 2016, Mr. Clark received a Letter of Reprimand for violation of ESD policies regarding his inappropriate use of state time and internet.

6. On August 11, 2016, Mr. Clark’s case was referred to the Executive Ethics Board for investigation of possible violations of the Ethics Act.

7. The following was found during the Board staff’s examination of Mr. Clark’s work computer:

**Internet History**

**YouTube Videos**

Mr. Clark viewed 146 non-work related YouTube videos from April 14 through May 27, 2016. Most of the videos were related to news, politics and music.

**Internet News Sites**

As a normal Internet Explorer (IE) process, IE saved the last 78 typed URL’s (Uniform Resources Locator) or internet address. Of the 78 saved 14 were news sites. The chart below shows the last typed URL for news sites including the date of the last visit.

<b><u>URL</u></b>	<b><u>Last entered date</u></b>	<b><u>URL</u></b>	<b><u>Last entered date</u></b>
www.cnn.com	5/26/16 @ 4:56 pm	http://thechew.com	5/13/16 @ 2:47 pm
www.today.com	5/25/16 @ 3:07 pm	http://nbc.com	5/12/16 @ 1:49 pm
www.heraldnet.com	5/24/16 @ 9:03 am	http://thetalk.com/	5/12/16 @ 1:46 pm
www.kxly.com	5/23/16 @ 2:56 pm	http://discoverynews.com	4/14/16 @ 2:43 pm
www.khq.com	5/23/16 @ 2:54 pm	http://discovery.com	4/14/16 @ 2:43 pm
www.krem.com	5/23/16@ 2:50 pm	http://thedailykos.com	4/14/16 @ 8:43 am
www.time.com	5/17/16@ 2:30 pm	http://buzzfeed.com	4/14/16 @ 8:28 am

The chart below shows some additional internet news sites visited by Mr. Clark for the period of April 14 through May 27, 2016:

<u>Name</u>	<u>Last visit date/time</u>	<u># of days accessed out of 32 possible work days</u>
Newer.com	5/27/16 @ 2:03 pm	14
Theguardian.com	5/26/16 @ 1:58 pm	5
Zergnet.com	5/24/16 @ 12:49 pm	5
KXLY.com	5/23/16 @ 2:59 pm	8
Bluenation.com	5/27/16 9:01 am	17
Joemygod.com	5/27/16 10:37 am	17
Motherjones.com	5/25/16 @ 11:37 am	12
Rightwingwatch.org	5/25/16 @ 4:30 pm	6

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. 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. Based on the stipulated facts above, Mr. Clark used state resources for a private benefit in violation of RCW 42.52.160.

3. 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.

## **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor these types of violations

significantly reduce the public respect and confidence in state government employees and they were continuous in nature.

#### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Clark and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. David Clark agrees that if any or all of the alleged violations were proven 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).

5. David Clark further agrees that the evidence available to the Board is such that the Board may conclude he 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.

6. David Clark 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge David Clark from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. David Clark 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between David Clark and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against David Clark at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if David Clark does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, David Clark waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, David Clark understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

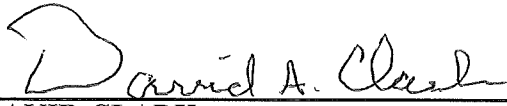
11. David Clark agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that David Clark complies with all terms and conditions

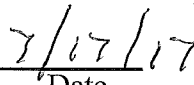
of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The non-suspended portion of the civil penalty in the amount of one-thousand dollars (\$1,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.


## II. CERTIFICATION

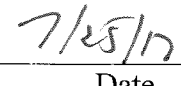
I, David Clark, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my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

  
\_\_\_\_\_  
DAVID CLARK  
Respondent

  
\_\_\_\_\_  
Date

Presented by:

  
\_\_\_\_\_  
KATE REYNOLDS  
Executive Director

  
\_\_\_\_\_  
Date

