

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

MICHAEL W. JOHNSON

NO. No. 00-04

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between Michael W. Johnson through his collective bargaining representative, Joanne McCaughan, and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director and Marc D. Defreyn, Assistant Attorney General. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

1. Mr. Michael W. Johnson is a former Economic Analyst 2 with the Employment Security Department ("ESD"). Mr. Johnson was hired by ESD in April 1997. Prior to working at ESD, Mr. Johnson worked at the Department of Labor and Industries ("L&I"). Mr. Johnson resigned from ESD on June 28, 2000, and returned to L&I where he is currently employed.

2. On April 21, 1997, Mr. Johnson signed a copy of the ESD code of ethics. Mr. Johnson's signature on the policy acknowledges his understanding that the use of state resources to complete work related to outside employment is not authorized.

3. On September 25, 1998, Mr. Johnson received ESD approval for a three month outside employment contract to teach Microeconomics at The Evergreen State College ("TESC").

4. In June 2000, the Board staff reviewed copies of documents that had been stored on the "hard drive" of Mr. Johnson's ESD provided workstation. At least fifty (50) of the reviewed

documents were unrelated to Mr. Johnson's official duties. All fifty (50) of the personal document files contained information related to Mr. Johnson's outside work as a TESC instructor, they included course descriptions, student examinations, lecture notes, individual student evaluations, and student learning contracts.

5. In June 2000, the Board staff recovered a "file history" for 33 of the 50 document files. The file history shows specific information about the file such as author, the "total editing" time on each file, and the number of changes. The total editing time for the 33 files was 2,940 minutes or 49 hours. In addition, the evidence indicates that Mr. Johnson printed documents on the printer and then made copies on the state copier for students in his class.

6. The board staff's review of documents on Mr. Johnson's workstation also located an e-mail message from Mr. Johnson to his ESD supervisor on December 14, 1999, at 10:05 PM. The message requested "exchange time" from ESD for the hours from 7:00 PM to 10:00 PM for that day. Mr. Johnson was granted the exchange time. The computer file evidence, however, indicates that during his exchange time Mr. Johnson worked on five document files related to his TESC work. The private work started before 8:22 PM and continued until 9:45 PM. In addition, the evidence indicates that Mr. Johnson requested and was granted 5.5 hours of exchange time on March 18, 1999. Nevertheless, the file histories indicate six entries on March 18, 1999, which start before 8:20 AM and continued until 10:46 AM.

7. ESD records indicate that in May 2000, Mr. Johnson served a three-day suspension without pay for conduct related to the findings of fact discussed above.

B. APPLICABLE LAW

1. RCW 42.52.160 (1) states:

No state officer or 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.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand it is an aggravating factor that: (1) the violation was continuing in nature (WAC 292-120-030(2)(a)); (2) the violation significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); (3) the violation involved personal gain to Mr. Johnson (WAC 292-120-030(2)(f)); and (4) Mr. Johnson committed the violation knowing that the conduct constituted a violation of ESD's outside employment policy (WAC 292-120-030(3)(a)).

2. It is a mitigating factor that ESD imposed corrective action in this matter by suspending Mr. Johnson without pay for a period of three days.

D. RESOLUTION

1. Mr. Johnson admits that he violated RCW 42.52.160(1); in that he: (1) used his ESD provided workstation and an ESD owned photocopier to support his outside employment at TESC; and (2) used several hours of state paid time (exchange time) to work on documents related to his outside employment at TESC.

2. Recognizing that he is personally responsible for his conduct, Mr. Johnson will pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) on the condition that Mr. Johnson complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW while employed by the State of Washington.

3. The civil penalty is payable to the state Executive Ethics Board within sixty (60) days of approval of this Stipulation and Order by the Board. 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.

4. Michael Johnson will attend Washington State sponsored ethics training within six (6) months of the date this Stipulation and Order is accepted by the Board.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Michael W. Johnson and over 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.

F. RELEASE/EFFECT OF ORDER

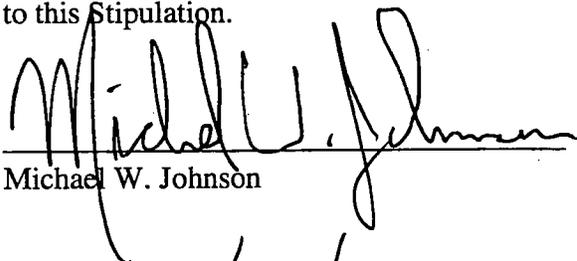
1. If the Board accepts this Stipulation, the Board releases and discharges Michael W. Johnson from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty owed in the amount of \$1,000.00 (\$500.00 suspended) and compliance with all other conditions of this Stipulation. Michael W. Johnson 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. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Michael W. Johnson and the Employment Security Department, the State of Washington, or other third party, which are now in existence or may be filed in the future.

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

G. CERTIFICATION

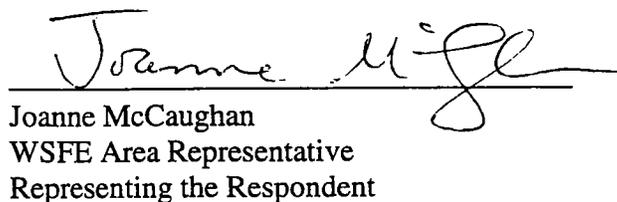
I, Michael W. Johnson, hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.



Michael W. Johnson

5/21/01

Date



Joanne McCaughan
WSFE Area Representative
Representing the Respondent

5/21/01

Date

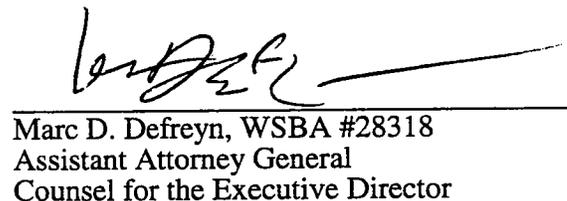
Stipulated to and presented by:



Brian R. Malarky
Executive Director

May 22, 2001

Date



Marc D. Defreyn, WSBA #28318
Assistant Attorney General
Counsel for the Executive Director

5-22-01

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

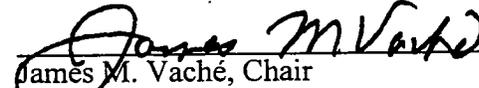
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ACCEPTED in its entirety;

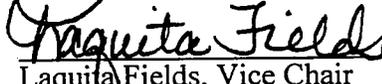
REJECTED in its entirety;

*MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____

DATED this 8th day of June, 2001.



James M. Vaché, Chair

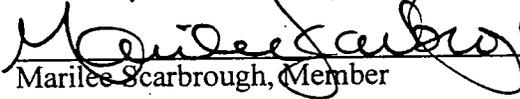


Laquita Fields, Vice Chair

Sutapa Basu, Member



Reverend Cheryl Rohret, Member



Marilee Scarbrough, Member

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

Respondent

Date

Attorney for Respondent

Date