BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

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| In the Matter of: | NO. 00-29 |
| ARVEL LINDLEY, | STIPULATION AND ORDER |
| Respondent | |

## I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between ARVEL LINDLEY 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. Arvel Lindley is employed as a Fiscal Technician by the Department of Information Services (DIS). Mr. Lindley is a Range 32 employee, earning a gross salary of $27,924 annually ($13.37 per hour). Pursuant to RCW 42.52.010(19), Mr. Lindley is a state employee.

2. Between July 24, 1998, through February 16, 2001, Mr. Lindley authored, read and received eight hundred and three (803) e-mails on his state e-mail account relating strictly to an outside activity – the Thurston County Youth Football Program, of which Mr. Lindley was a member of the Board of Directors.

3. Mr. Lindley spent approximately eighty (80) hours on non-state related e-mails between July 24, 1998, through February 16, 2001.

4. Mr. Lindley has not received, nor been subjected to, any departmental discipline or other sanctions related to this matter.

## B. APPLICABLE LAW

1. **RCW 42.52.070** states:

> Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

2. Additionally, **RCW 42.52.160(1)** provides that no state employee may use state resources for private benefit or gain:

> No state officer or state employee may employ or use any person, money, or other property under the officer's or employee's control or direction, or in his or her custody, for private benefit or gain of the officer, employee, or another.

3. Pursuant to **RCW 42.52.160(3)** the Executive Ethics Board adopted rules relating to personal use of state resources. Under **WAC 292-110- 010(2)**:

> State officers or state employees may not use resources including any person, money, or other property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person.

4. **WAC 292-110-010(3)** allows state officers or state employees to make occasional but limited use of state resources under certain narrow circumstances. However, the rule goes on to prohibit even occasional and limited use of state resources in subsection (4) and (5). Those sections read in pertinent part as follows:

> **WAC 292-110-010(4)(b):**
>
> Occasional and limited use of state resources does not include the following private uses of state resources:
>
> (b) a use for the purpose of supporting, promoting, or soliciting for an outside organization or group unless provided for by law or authorized by an agency head or designee.


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## 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 could reduce the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); (3) the violation involved personal gain or special privilege to Mr. Lindley (WAC 292-120-030(2)(f)); and, (4) Mr. Lindley incurred no other sanctions as a result of his violations (WAC 292-120-030(3)(f)).

2. It is a mitigating factor that: (1) Mr. Lindley's conduct was unintentional (WAC 292-120-030(4)(d)); and, (2) Mr. Lindley notified others to stop sending him non-work related e-mails (WAC 292-120-030(4)(e)).

## D. RESOLUTION

1. Mr. Lindley admits that he violated provisions of chapter 42.52 RCW by authoring, reading and receiving over a thirty-two (32) month period of time eight hundred and three (803) e-mails on his state e-mail account completely unrelated to his official duties.

2. Mr. Lindley will pay a civil penalty in the amount of one thousand five hundred dollars ($1,500.00). The Board agrees to suspend seven hundred and fifty dollars ($750.00) on the condition that Mr. Lindley complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of three (3) years from the date this Stipulation and Order is accepted by the Board.

3. The civil penalty in the amount of seven hundred and fifty dollars ($750.00) is payable to the *State of Washington* which will be remitted to the Board in ten (10) equal installments of seventy five dollars ($75.00) due on June 15, 2001, and the 15th day of each month thereafter until paid in full. Failure to make timely payment will cause the entire amount of the civil penalty, including the amount previously suspended, to become due and payable within ten (10) days of the missed payment.

4. Arvel Lindley 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 Arvel Lindley 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.

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## F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Arvel Lindley 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 $1,500.00 ($750.00 suspended as noted above) and compliance with all other conditions of this Stipulation. Arvel Lindley 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 Arvel Lindley and the Department of Information Services, the State of Washington, or any 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.

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## G. CERTIFICATION

I, Arvel Lindley, hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

Arvel Lindley

05/29/01

Date

Stipulated to and presented by:

Brian R. Malarky
Executive Director

05-31-01

Date

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

6-11-01

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

__✓__ 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 _____.

_____

_____

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DATED this 8th day of June, 2001.

James M Vaché

James M. Vaché, Chair

Laquita Fields

Laquita Fields, Vice Chair

_____

Sutapa Basu, Member

Marilee Scarbrough

Marilee Scarbrough, Member

Cheryl L J Rohret

Rev. Cheryl Rohret, Member

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

_____ _____

Respondent Date

_____ _____

Attorney for Respondent Date



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