

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

JAMES E. MILLER

Respondent

NO. 01-12

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between James E. Miller, and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. 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. James E. Miller is a Washington State Patrol (WSP) Trooper and served in that capacity at all times material to the allegations herein.
2. From 1993 through August 2000, Trooper Miller carried on a personal relationship with a woman, while on duty. Trooper Miller allowed this woman to accompany him in his patrol car and had sexual relations with her while he was on duty in WSP offices at the Coleman Dock.
3. The conduct described in paragraph 2, above, is documented in the transcripts of interviews conducted by the Washington State Patrol with Trooper Miller and the woman involved. Trooper Miller does not dispute the allegations.
4. The Washington State Patrol disciplined Trooper Miller for the conduct described above by suspending him from his job without pay for 120 hours. In addition to the suspension

and as part of the disciplinary action by the Washington State Patrol, Trooper Miller lost an additional 15 days of annual leave (120 hours).

B. APPLICABLE LAW

1. 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.

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 violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)).

2. It is a mitigating factor that Trooper Miller has been disciplined by the Washington State Patrol for his conduct. WAC 292-120-020(4).

D. RESOLUTION

1. James E. Miller admits that he violated provisions of chapter 42.52 RCW by using state facilities for personal reasons unrelated to his duties as a Washington State Patrol Trooper, a violation of RCW 42.52.160;

2. Recognizing that he is personally responsible for his conduct, Trooper Miller will pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). The Board

agrees to suspend two thousand dollars (\$2,000.00) on the condition that Trooper Miller 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 total amount of the civil penalty (\$500.00) is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over James E. Miller 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 James E. Miller 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. James E. Miller 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.

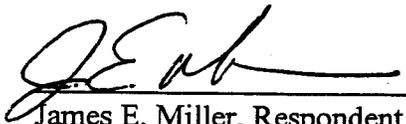
2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between James E. Miller and the Washington State Patrol, the State of Washington, or other third party, which are now in existence or may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order will be inadmissible for any purpose in any other proceeding involving James E. Miller, the state, and/or third parties aligned with the state.

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

E. CERTIFICATION

I, James E. Miller, 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 voluntarily agree to this Stipulation.

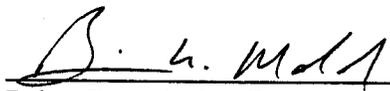


James E. Miller, Respondent

7-1-02

Date

Stipulated to and presented by:



Brian R. Malarky, Executive Director

June 21, 2002
Date

RECEIVED
JUL 08 2002
EXECUTIVE
ETHICS BOARD

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;

X _____ *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by July 26, 2002.

① Add to paragraph C.1. "and (3) intentionally committed the violation with knowledge that the conduct constituted a violation (WAC 292-120-130(3)(a))."

② ^{DELETE} Change paragraphs D.2. and ~~D.3.~~ Substitute with "Recognizing that he is personally responsible for his conduct, Trooper Miller will

DATED this 12th day of July, 2002. pay a civil penalty in the amount of \$5,000."

Change paragraph D.3 by substituting \$5,000.00 for \$500.00.

Laquita Fields
Laquita Fields, Chair

Marilee Scarbrough
Marilee Scarbrough, Vice Chair

Sutapa Basu
Sutapa Basu, Member

James M. Vache
James M. Vache, Member

Paul Zellinsky
Paul Zellinsky, Member

I, J.E. MILLER accept do not accept (circle one) the proposed modification.

JEM
Respondent

7-22-02
Date

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:
JAMES MILLER
Respondent

NO. 01-12
REQUEST TO AMEND
STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between James Miller and the EXECUTIVE ETHICS BOARD ("Board").

FACTS AND REQUEST

1. On July 12, 2002, the Board approved a modification to a Proposed Stipulation and Order regarding the matter referenced above. Under the modified Stipulation and Order, Mr. Miller agreed to the following change to paragraph D(2):

Recognizing that he is personally responsible for his conduct, Trooper Miller will pay a civil penalty in the amount of five thousand dollars (\$5,000.00).

2. On July 22, 2002, Mr. Miler accepted the Board's proposed modification. In addition, Mr. Miller asked the Board to allow him to pay the civil penalty through monthly payments. (See attached letter from Mr. Miller)

3. On July 30, 2002, the Executive Director agreed to recommend to the Board a modification to the Proposed Stipulation and Order that allows Mr. Miller to pay the \$5,000.00 civil penalty over a twelve month period. (See attached letter from the Executive Director)

4. On August 5, 2002, Mr. Miller agreed to the Executive Director's proposal to recommend a payment of the civil penalty over a twelve-month period.

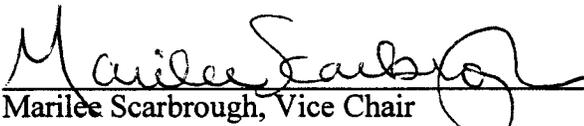
II. ORDER

Having reviewed Mr. Miller's request, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that paragraph D(3) of the original Stipulation is MODIFIED as follows:

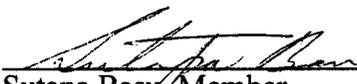
The civil penalty in the amount of five thousand dollars (\$5,000.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in eleven (11) equal installments of four hundred and twenty-five dollars (\$425.00) with the first payment due on September 30, 2002, and the 30th day of each month thereafter; and a final payment of three hundred and twenty-five dollars (\$325.00) due by August 30, 2003. 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.

DATED this 13th day of September, 2002

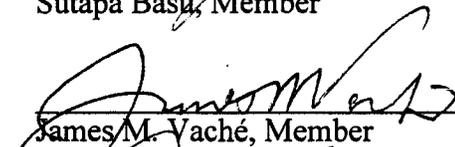
Laquita Fields, Chair



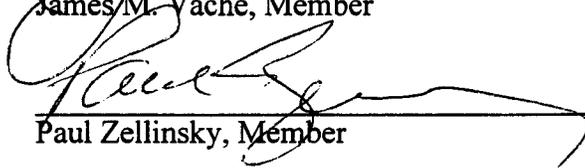
Marilee Scarbrough, Vice Chair



Sutapa Basu, Member



James M. Vaché, Member



Paul Zellinsky, Member