BEFORE THE WASHINGTON STATE

EXECUTIVE ETHICS BOARD

In the Matter of: BARBARA BROOKS-WORRELL Respondent.	NO. 01-22 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between the Respondent, BARBARA BROOKS-WORRELL, 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. On April 17, 2001 the State Auditor's Office (SAO) referred the final report of Whistleblower Case No. 01-116 to the Board.

2. Barbara Brooks-Worrell is an exempt research scientist employed by the University of Washington, Department of Medicine, Division of Metabolism, Endocrinology and Nutrition (University). She is therefore subject to the jurisdiction of the Board.

3. The SAO received a complaint regarding this matter on December 4, 2000. Shortly after, Ms. Brooks-Worrell was informed of the complaint, but prior to the SAO interviewing her, she deleted many of the e-mails related to the complaint allegations. The SAO was able to retrieve approximately 6,900 e-mails from University backups. The SAO analysis and investigation revealed the following:

a. E-mails retrieved by the SAO were of a personal nature and not related to Ms. Brooks-Worrell's official University duties. These e-mails were sent over the course of 29 months. On average, at least 424 e-mails were sent each month including a high of 828 (802 of which were personal) during March 2000.

b. Ms. Brooks-Worrell used her University e-mail address to subscribe to an electronic mailing list involving the Bullmastiff breed of dog. This mailing list involved up to 150 postings per day by subscribers. Ms. Brooks-Worrell asserts she did not read or respond to every e-mail. Ms. Brooks-Worrell also asserts that she used University e-mail to educate people who inquired about characteristics of the dog breed.

c. Ms. Brooks-Worrell used her University computer to send and receive personal messages using her Internet access and private e-mail address. Ms. Brooks-Worrell also used her University computer to access the Internet for her personal dog breeding business, Ol West Bullmastiffs. Ms. Brooks-Worrell's computer address book also contained e-mail addresses of various family members.

d. On at least one instance, Ms. Brooks-Worrell spent approximately two hours responding to personal e-mails during working hours.

e. Ms. Brooks-Worrell provided her University phone number and e-mail address to others in the course of her personal dog breeding business. Her University e-mail address was posted on two web sites as a point of contact regarding the dog breeding business. Ms. Brooks-Worrell used her University e-mail address in advertisements of her personal dog breeding business.

f. Ms. Brook-Worrell used her University e-mail address to subscribe to two additional electronic mailing lists involving dogs.

g. Ms. Brooks-Worrell used her University e-mail address to support the operations of private organizations. She used her e-mail to inform interested parties of various club events. Also, as a board member of two private organizations; the American Bullmastiff

Association and the Pacific Northwest Bullmastiff Fanciers, she used University e-mail to conduct business of the organization and inform organization members of board actions. Her University e-mail address was posted on two web sites as a point of contact for animal rescue efforts by private organizations.

4. The University of Washington has taken no disciplinary action regarding Ms. Brooks-Worrell's use of University resources.

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.

2. RCW 42.52.120 prohibits state officers and employees from receiving any thing of economic value from private organizations unless all conditions under RCW 42.52.120(1)(a)-(f) are met. One of these conditions is RCW 42.52.120(1)(c), which provides that:

> The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee.

3. EEB Advisory Opinion 98-07, states that while outside employment may be permissible under RCW 42.52.120, a state officer or employee may not use state resources to conduct the outside business.

4. WAC 292-110-010(6)(a) explicitly prohibits at all times the use of state resources for "the purpose of conducting an outside business or private employment."

C. AGGRAVATING AND MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed criteria in WAC 292-120-030. In the case at hand: (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)).

2. It is an aggravating factor that soon after being advised that there was a complaint regarding her use of the University computer, Ms. Brooks-Worrell deleted 6,900 e-mail transmissions.

3. There are no mitigating factors in this case.

D. RESOLUTION

1. Ms. Brooks-Worrell admits that she violated provisions of RCW 42.52.160 by using her state computer to send and receive e-mail that was unrelated to her official duties, to subscribe to electronic mailing lists, and by using her state computer to access internet sites which were unrelated to her official duties.

2. Ms. Brooks-Worrell admits that she violated provisions of RCW 42.52.160(1) and RCW 42.52.120 by using state resources to engage in a private business in a manner that violated State law.

3. Recognizing that she is personally responsible for her conduct, Ms. Brooks-Worrell will pay a civil penalty in the amount of seven thousand five thousand dollars ($7,500.00). The Board agrees to suspend two thousand five hundred dollars ($2,500.00) on the condition that Ms. Brooks-Worrell 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.

4. 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 dollars ($400.00) with the first payment due on January 31, 2003, and the last day of each month thereafter; and a final payment of six hundred dollars ($600.00)

due by January 31, 2004. 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.

II. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Board has jurisdiction over Barbara Brooks-Worrell 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.

III. RELEASE / EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Barbara Brooks-Worrell 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 $5,000.00 and compliance with all other conditions of this Stipulation. Barbara Brooks-Worrell 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 Barbara Brooks-Worrell and the Washington State Executive Ethics Board, the State of Washington, or other third party, which 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.

4. If this Stipulation and Order is not accepted, it shall be null and void, and may not be used for any purpose in connection with the above-entitled action.

IV. CERTIFICATION

I, Barbara Brooks-Worrell, 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.

12-26-02

Barbara Brooks-Worrell Date
Respondent

Stipulated to and presented by:

26 DEC 02

Brian R. Malarky Date
Executive Director

V. 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

___X___ 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 Barbara Brooks-Worrell.

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DATED this 10th day of January, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice-Chair

Laquita Fields, Member

Sutapa Basu, Member

Paul Zellinsky, Member

I, Barbara Brooks-Worrell, accept/do not accept (circle one) the proposed modification.

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Barbara Brooks-Worrell, Respondent Date