BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DARRELL FREGIA Respondent.	NO. 01-31 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between the Respondent, DARRELL FREGIA, 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 May 18, 2001 the State Auditor's Office (SAO) referred the final report of Whistleblower Case No. 01-163 to the Executive Ethics Board. The SAO referral alleged that there was reasonable cause to believe that there was a violation of state law when Darrell Fregia's household members used a state-owned computer to write school papers and access the Internet.

2. Darrell Fregia is Policy Coordinator for the Employment Security Department (ESD). Therefore, he is subject to the jurisdiction of the Executive Ethics Board.

3. The SAO investigation revealed that the contents of the hard drive of the computer assigned to Mr. Fregia contained evidence of the following:

- 54 files containing personal documents prepared by Mr. Fregia's household members;
- 43 compressed music files downloaded off the Internet;
- 28 album cover images downloaded off the Internet; and
- Evidence of numerous visits to Internet sites related to financial information, ticket prices, horoscopes, music, games, sports, entertainment, etc.

4. The Board staff review of the SAO working papers indicates that from 2000 to 2001 the computer assigned to Mr. Fregia was kept at his home and most of the conduct occurred outside of Mr. Fregia's normal work hours.

5. On July 3, 2002, the ESD issued a letter of reprimand to Mr. Fregia. This letter requested that Mr. Fregia: ensure there is no personal use of state-owned equipment by household members; return all state-owned equipment housed at his home; enroll and attend ESD Ethics Training, and review and sign Policy and Procedure #1016, Employee Conduct.

6. ESD indicates that Mr. Fregia has complied with the directives issued in its July 3, 2002 letter of reprimand.

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 his official custody, for the private benefit or gain of the officer, employee, or another.

2. WAC 292-110-010 (6) (f) prohibits:

> Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

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 the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)).

2. It is a mitigating factor that the Employment Security Department issued a letter of reprimand to Mr. Fregia regarding this conduct and that Mr. Fregia has complied with the directives in the letter.

D. RESOLUTION

1. Mr. Fregia admits that he violated provisions of RCW 42.52.160 when his state computer was used by his household members to prepare personal documents, download compressed music files off the Internet, access album cover images from the Internet, and access other Internet sites such as financial information, ticket prices, horoscopes, music, games, sports and entertainment which were unrelated to his official duties.

2. Recognizing that he is personally responsible for his conduct, Mr. Fregia will pay a civil penalty in the amount of two hundred fifty dollars ($250.00). The Board agrees to suspend one hundred fifty dollars ($150.00) on the condition that Mr. Fregia 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 of one hundred dollars ($100.00) is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

II. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Darrell Fregia 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 Darrell Fregia 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 $100.00 and compliance with all other conditions of this Stipulation. Darrell Fregia 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 Darrell Fregia 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, Darrell Fregia, 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.

Darrell Fregia February 4, 2003

Darrell Fregia Date
Respondent

Stipulated to and presented by:

Brian R. Malarky February 4, 2003

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 Darrell Fregia.

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DATED this 14th day of February 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice-Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

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Darrell Fregia, Respondent Date