BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DEXTER BAILEY, Respondent.	NO. 02-01 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, DEXTER BAILEY, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On January 18, 2002, the Executive Ethics Board received a complaint alleging that Dexter Bailey, Assistant Dean for Development/External Relations at the State of Washington, University of Washington (UW), violated the Ethics in Public Service Act when he used a state computer for a private business, PSDB Investment Group, and had personal documents stored on his computer.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. Dexter Bailey understands that if the Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to $5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. Dexter Bailey recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Bailey violated the Ethics in Public Service Act, even if only unintentionally or unknowingly. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. Dexter Bailey waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Dexter Bailey 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, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Mr. Bailey in turn 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 agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Dexter Bailey and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.9. If the Board rejects this stipulation, or if Dexter Bailey does not accept the Board's proposed modification(s), if any, Mr. Bailey waives any objection to participation at the hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Bailey understands and agrees that this proposed stipulation and information obtained during formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDNGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, UW employed Dexter Bailey as Assistant Dean for Development/External Relations.

2.2. In October 2001, the following personal documents were found on Dexter Bailey's state computer:

a. Letter to IRS dated 6/13/00 from Mr. Bailey
b. Letter to Mr. Jones concerning tax documents (investments) (undated)
c. Letter to Ohio University Credit Union dated 05/10/00
d. Letter to Ohio University Credit Union dated 8/31/99
e. Dating Service Member Profile (undated)
f. Retail Order Acknowledgement (undated)
g. Ohio University Alumni Association material (undated)

2.3. In November 2001, an audit of Dexter Bailey's state computer revealed the following additional personal documents or emails:

a. 263 personal e-mails, most of which were sent to Mr. Bailey over a 16 month period;
b. Two business partnership templates;
c. Three personal financial documents;
d. A personal address book on the hard-drive;
e. Two personal biographical documents; and
f. Two other personal documents.

2.4. The documents on Dexter Bailey's computer categorized in the audit as outside business documents, were actually written to support a private non-profit organization.

2.5. Dexter Bailey did not have permission from his supervisor to use his state computer for personal use or to use the facilities to support the private non-profit organization he was forming.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Dexter Bailey and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090, the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

3.4. The Ethics in Public Service Act allows for de minimus personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards do not prohibit use that is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. However, WAC 292-110-010(6)(b) prohibits the use of state resources to support private organization, including non-profits, unless specifically approved by an agency head or designee.

3.5. Based on the foregoing Findings of Fact, the Board concludes that Dexter Bailey violated RCW 42.52.160 and WAC 292-110-010 even if he did so unintentionally.

3.6. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is an

aggravating factor that UW took no disciplinary action in this matter (WAC 292-120-030(3)(f)). It is a mitigating factor that Mr. Bailey's violation of the Ethics in Public Service Act was unintentional. (WAC 292-120-030(4(d)).

Section 4: AGREED ORDER

4.1. Dexter Bailey will pay a civil penalty in the amount of two hundred fifty dollars ($250.00). The Board agrees to suspend the entire civil penalty on the condition that Mr. Bailey complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. Mr. Bailey will accept a letter of instruction from the Board.

4.2. Dexter Bailey will reimburse University of Washington one hundred dollars ($100.00) for investigative costs this matter. The investigative costs are payable to the University of Washington within fifteen (15) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

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

Dexter Bailey 9/30/03

Dexter Bailey Date
Respondent

Stipulated to and presented by:

Brian R. Malarky Oct 02, 03

Brian R. Malarky Date
Executive Director

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

__X__ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

_____ MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

_____

_____

_____

_____

DATED this 10th day of ~~September~~ October, 2003.

James M. Vaché, Chair

Laquita Fields, Member

Paul Zellinsky, Member

* I, Dexter Bailey, accept/do not accept (circle one) the proposed modification(s).

_____

Dexter Bailey, Respondent Date

Washington State Executive Ethics Board

2425 Bristol Court SW • PO Box 40149 • OLYMPIA WA 98504-0149
(360) 664-0871 • Fax (360) 586-3955 http://www.wa.gov/ethics

October 10, 2003

Mr. Dexter Bailey
3622 Whitman Avenue North, Unit 201
Seattle, WA 98103

RE: Executive Ethics Board Complaint No. 02-01
Letter of Instruction

Dear Mr. Bailey:

This letter of instruction is provided to you pursuant to the Stipulation and Order resolving EEB Case No. 02-01. The purpose of this letter is to provide you with direction regarding the proper use of state resources.

State employees are prohibited from using state resources for personal gain pursuant to RCW 42.52.160. Your improper use of your state computer to compile personal documents is more than a violation of the state's ethics laws. Such use, both individually and collectively, seriously undermines the public's confidence and trust that state employees use public resources only to advance the *public's* interest in the course of official duties. When the abuse of state resources occurs and is reported publicly, state employees are discredited generally, and held in suspicion by the very people we serve.

We trust this letter will be of assistance to you. This letter is issued pursuant to the Board's authority in RCW 42.52.420 and is not part of your official personnel file. If you have any questions regarding the Ethics in Public Service Act or need additional advice, please contact Board's Executive Director, Brian Malarky, at (360) 664-0871.

Sincerely,

James M. Vaché, Chair
Executive Ethics Board