

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

DAN LEAHY,

Respondent.

No. 02-060

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Dan Leahy, 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 December 6, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Dan Leahy, an employee of the State of Washington, Evergreen State College (ESC), used state resources to support and promote the interests of, or solicit for, an outside organization. The Executive Ethics Board reviewed this referral and issued a complaint on February 14, 2003.

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. Dan Leahy understands that if 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. Dan Leahy recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Leahy violated the Ethics in Public Service Act. 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. Dan Leahy 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 Dan Leahy from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Mr. Leahy 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 Dan Leahy 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 Dan Leahy does not accept the Board's proposed modification(s), if any, Mr. Leahy waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Leahy understands and agrees that this proposed stipulation and information obtained during any 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: FINDINGS OF FACT**

2.1. When the complaint in this matter was filed, and at all times material hereto, the State of Washington, ESC, employed Dan Leahy as an adjunct professor.

2.2. Dan Leahy was teaching a class entitled "The Mexican Nation State" during the spring of 2002. The class included a trip through Mexico as part of the class study. On May 2, 2002, while the class was touring Mexico, the Mexican government expelled Dan Leahy and 17 of his students.

2.3. On July 1, 2002, Dan Leahy wrote and sent a four-page open letter to more than 600 individuals and also distributed the letter to local businesses explaining the circumstances relating to their expulsion from Mexico and soliciting Donations to the student defense fund. The letter states: "Please fax a letter or send an email message asking that the expulsion be annulled. ... Also, please consider sending a Donation to the students' legal defense fund by writing a check..." The students' legal defense fund was not affiliated with the ESC.

2.4. Dan Leahy used ESC's stationary, print shop and postage to produce and mail the letter. The printing and mailing costs totaled \$471.00. Dan Leahy did not obtain authorization or approval from ESC's president to utilize state resources to write and send the letter.

2.5. Dan Leahy reimbursed ESC for the printing and mailing costs.

### **Section 3: CONCLUSIONS OF LAW**

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

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service Act prohibits state employees from using state resources under their control for the private benefit of another. 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.

3.4. The Ethics Act further prohibits certain private activity and uses of state resources. WAC 292-110-010(6)(b) explicitly prohibits at all times the private use of state resources for the purpose of supporting, promoting the interests of, or soliciting for, an outside organization or group, including, but not limited to a private business, a nonprofit organization, or a political party unless specifically authorized by law or an agency head.

3.5. Based on Findings of Fact 2.1 through 2.5, Dan Leahy used state resources in violation of RCW 42.52.160(1) and WAC 292-110-010(6)(b), when he used state resources to send a letter to over 600 individuals and distributed this letter to local businesses.

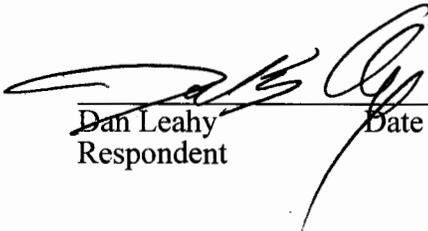
3.6. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is a mitigating factor that Dan Leahy reimbursed ESC for the costs of printing and mailing the letter.

**Section 4: AGREED ORDER**

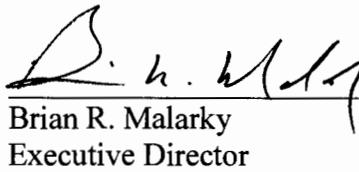
4.1. Dan Leahy will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Dan Leahy will also pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The Board agrees to suspend \$150.00 of the civil penalty on the condition that Dan Leahy complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The \$100 amount due on the civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

**CERTIFICATION**

I, Dan Leahy, 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 voluntarily agree to this Stipulation.

 12/01/03  
Dan Leahy                      Date  
Respondent

Stipulated to and presented by:

 12/04/03  
Brian R. Malarky                      Date  
Executive Director

