BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: Ruth L. Smith Respondent	NO. 02-65 REQUEST TO AMEND STIPULATION AND ORDER

I. STIPULATION

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

1. On September 12, 2003, the Board modified a Proposed Stipulation and Order regarding the matter referenced above to order that Ruth Smith pay a civil penalty of five hundred dollars ($500.00). The Board also modified the Order to delete the third sentence of paragraph 4.1 to indicate that no portion of the civil penalty was suspended.

2. Ruth Smith accepts the modifications as proposed by the Board. Ms. Smith requests the Board allow her to make payments on the civil penalty and amend the Order to state the following as paragraph 4.2 of Section 4 Agreed Order.

> 4.2 The civil penalty in the amount of five hundred dollars ($500.00) is payable to the *State of Washington,* which will be remitted to the Executive Ethics Board in five (5) equal installments of one hundred dollars ($100.00) with the first payment due on November 10, 2003, and the tenth day of each month thereafter. 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. ORDER

Having reviewed Ruth Smith's request, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the above paragraph be added to Section 4 of the Agreed Order.

DATED this 10th day of October, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: RUTH L. SMITH, Respondent.	NO. 02-065 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, RUTH SMITH, 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 September 23, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Ruth Smith, an employee of the State of Washington, Department of Labor and Industries (L&I), used her state computer, email and state telephone system for personal benefit. The Executive Ethics Board reviewed this referral and issued a complaint on May 9, 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. Ruth Smith 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. Ruth Smith recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Smith 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. Ruth Smith waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 Ruth Smith 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. Ms. Smith 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 Ruth Smith 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 Ruth Smith does not accept the Board's proposed modification(s), if any, Ms. Smith 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, Ms. Smith 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, L&I employed Ruth Smith as a Medical Treatment Adjudicator 3. Ms. Smith has been a state employee for approximately 15 years.

2.2. From February 26, 2002 through March 11, 2002 (a 10-day period), 117 personal messages were stored on Ruth Smith's computer. Ms. Smith corresponded with family members and a co-worker on a daily basis with as many as 25 non-work-related messages sent in a four-hour period.

2.3. Ruth Smith accessed a minimum of 20 non-work-related sites, including Key Bank, Twin County Credit Union, Las Vegas, Alaska Airlines and various retail merchandisers during a three-week period.

2.4. Ruth Smith stored a minimum of 60 personal documents on her state computer. These documents included a sample wedding invitation, extensive party

planning documents containing recipes for meals and libations, to-do lists, jokes, and a state application and resume belonging to a relative.

2.5. Ruth Smith's computer contained 535 personal messages during a twelve-week period sent from Ms. Smith to family members, her home e-mail address, and co-workers. This averages to a little over 44 personal messages a week.

2.6. After reviewing the documentation found on Ruth Smith's computer, L&I concluded that:

- some e-mail and word processing activity contained conversation and items inappropriate for the workplace;
- some internet sites access indicated Ms. Smith was checking personal accounts or conducting personal business;
- word processing documents indicated Ms. Smith was using her state computer to create and use personal documents; and
- even though her email was generally neutral in content, taken together with her internet usage and stored documents, her use of state computer resources exceeded authorized use requirements.

2.7. L&I sent notifications to all employees via e-mail and the intranet regarding L&I's policies on the use of electronic communication by employees indicating that use was restricted to authorized users and is for official state business. Ruth Smith received the notifications dated on April 1, July 20, and December 21, 1998, August 3, October 22, and December 13, 2001, and March 12, 2002.

2.8. L&I Policy No. 3.30 states that state funds, equipment, supplies, and other resources are to be for state business only. Policy 3.30 also indicates that acceptable limited personal use includes occasional brief e-mail messages to other employees or family members in lieu of a telephone call.

2.9. L&I Policy No. AP 7.30 indicates that "L&I technology is available and intended for official business use which supports the agency's goals and priorities. State law does permit some limited personal use of technology, electronic mail, and the Internet by employees under very specific rules."

2.10. On January 30, 2003, L&I reduced Ms. Smith's monthly salary by 5 percent for a period of two months for the personal use of state resources detailed above. Ms. Smith's salary was $3,215.00 per month. Her salary was reduced to $3,059.00 from February 16, 2003 through April 15, 2003.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ruth Smith 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. 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 include that the use 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.

3.5. Based on Findings of Fact 2.1 through 2.9, Ruth Smith used state resources in violation of RCW 42.52.160, WAC 292-110-010 and knowingly violated agency policy.

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 Ruth Smith intentionally committed the violations with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)). It is a mitigating factor that Ms. Smith received a written reprimand and a monetary sanction as a result of her conduct (WAC 292-120-030(4)(a).

Section 4: AGREED ORDER

4.1. Ruth Smith will accept a letter of reprimand from the Executive Ethics Board. Ms. Smith will also pay a civil penalty in the amount of two hundred fifty dollars ($250.00). The Board agrees to suspend the $250.00 civil penalty on the condition that Ms. Smith complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW.

CERTIFICATION

I, Ruth Smith, 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.

Ruth L Smith 9-3-03

Ruth Smith Date
Respondent

Stipulated to and presented by:

B. L. Malarky Sep 10, 2003

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

_____ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

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

Paragraph 4: The second sentence shall state: Ms. Smith will also pay a civil penalty in the amount of five hundred dollars ($500.00). Delete the third sentence.

DATED this 12th day of September, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

Ruth Smith, Respondent — Date 10-1-03