BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: TERESA WALLER, Respondent.	No. 02-044 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Teresa Waller, 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 August 20, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Teresa Waller, an employee of the State of Washington, Sentencing Guideline Commission (SGC), used state resources to access internet sites regarding genealogy, high school classmates, department stores, movies, television, trivia, hairstyles and pet supplies. With the knowledge of her supervisor, Ms. Waller also e-mailed her co-workers lists of trivia questions to answer. The Executive Ethics Board reviewed this referral and issued a complaint on January 10, 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. Teresa Waller 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. Teresa Waller recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Waller 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. Teresa Waller 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 Teresa Waller 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. Waller 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 Teresa Waller 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 Teresa Waller does not accept the Board's proposed modification(s), if any, Ms. Waller 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. Waller 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, SGC, employed Teresa Waller as a Research Analyst. Ms. Waller has been employed by the SGC for approximately four years.

2.2. A review of Teresa Waller's Internet use from April 2002 to June 2002 revealed that Ms. Waller accessed Internet sites dealing with genealogy, high school classmates, department stores, movies, television, trivia, hairstyles, gardening, department stores and pet supplies. Many of these sites were accessed to gather information for trivia questions that were sent to all of her co-workers; however, some of the sites were accessed for personal reasons not related to the compilation of trivia questions.

2.3. Ms. Waller e-mailed all of her co-workers and the SGC Executive Director lists of trivia questions on April 24, 25, 26, 29, 30 and May 8, 14, 15, 2002.

2.4. SGC employees participated in the e-mail trivia "contest" on nearly a daily basis. Staff would complete the answers to the email trivia contests during working hours. The Executive Director (Ms. Waller's supervisor) not only condoned the behavior, but actually participated in the trivia contests, which may have led the staff to believe that it was acceptable. The SGC denies that this was improper use of state resources.

2.5. On April 24, 2000, the SGC issued an administrative policy regarding the use of Internet systems. That policy states, in part:

> ...Internet access and services are provided to employees of the Sentencing Guidelines Commission for the sole purpose of assisting them in performing official duties. ... Sentencing Guidelines Commission computer resources, information technologies, and networks may be used for legitimate SGC purposes only. Internet access and services are provided for official Sentencing Guidelines commission business activities. ... Sentencing Guidelines Commission computer resources, information technologies, and networks, including Internet access shall not be used for the following prohibited activities: Accessing the Internet for personal business, personal interest or any other non-Sentencing Guidelines Commission business use. ...

The SGC policy further indicates that SGC employees may make occasional but limited personal use of computer systems, if there is no cost to the state, the use of state resources does not interfere with the performance of the employee's official duties, the use is brief in duration and does not disrupt or distract other employees from the conduct of state

business due to volume and frequency, and the use does not compromise the security or integrity of state information or software. The SGC policy was not submitted for approval to the Board.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Teresa Waller 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(4) 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 and the employee's agency has adopted a policy authorizing Internet access consistent with the Board's de minimis rule.

3.5. Based on Findings of Fact 2.1 to 2.5, Teresa Waller used state resources in violation of RCW 42.52.160, WAC 292-110-010 and agency policy. Ms. Waller's use of the Internet to gather information to compose the trivia questions and access personal interest items violated agency policy and exceeded the de minimus standards. In addition, the trivia questions occurred on a frequent basis and obligated other employees to make a personal use of state resources.

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 the conduct was approved of or condoned by the Executive Director of the SGC (WAC 292-120-030(4)(c)).

Section 4: AGREED ORDER

4.1. Teresa Waller will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Teresa Waller 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 Teresa Waller complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The civil penalty of $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.

4.2. Teresa Waller will cooperate in the Board's investigation of other matters related to the time of her employment at SGC, will testify truthfully regarding the facts of her employment with SGC and the facts recited above at any subsequent Board proceedings.

CERTIFICATION

I, Teresa Waller, 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.

Teresa Waller 3/30/2004
Teresa Waller Date
Respondent

Stipulated to and presented by:

April 2, 2004
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):

monetary penalty shall be $500.00

DATED this 9th day of April, 2004

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yensen, Member

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

Teresa Waller 4-27/04

Teresa Waller, Respondent Date