

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

JAMES NICKERSON

Respondent.

NO. 02-53

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between, JAMES NICKERSON, Respondent, and the 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.

A. FACTS

1. On September 4, 2002 the State Auditor's Office (SAO) referred the final report of Whistleblower Case No 02-071 to the Executive Ethics Board. The referral alleged that James Nickerson, Respondent, may have violated RCW 42.52.160(1) by using his state computer to access the Internet and send personal e-mail containing inappropriate content to co-workers, friends, family and outside agencies. At the January 10, 2003 Board meeting, the Board issued an ethics complaint regarding the allegations contained in the SAO's investigation report.

2. Mr. Nickerson is a Social Worker 3 assigned to the Kent Regional Justice Center Court Unit, a Division of Children and Family Services (DCFS) unit of the Department of Social and Health Services (DSHS), and subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360.

3. During its investigation, the SAO reviewed copies of Mr. Nickerson's e-mail, Internet and computer folders. The SAO found that Mr. Nickerson accessed a minimum of 63 websites on the Internet, some relating to sports, jokes, auctions, department stores, automobiles and movies.

4. The SAO also found that Mr. Nickerson accessed pictures of the Sonics basketball team, the Seahawks cheerleaders, automobiles, and saved pictures from a New Year's party. He also accessed adult-oriented material.

5. The SAO working papers contain copies of e-mail Mr. Nickerson sent to co-workers, friends, family and outside agencies containing inappropriate jokes and other inappropriate content.

6. During the SAO investigation, Mr. Nickerson admitted to surfing the Internet and subscribing to a website that sent him inspirational messages daily. He also admitted to accessing adult-oriented material.

7. In response to the SAO investigation, Mr. Nickerson indicated he would cancel the web sites that he subscribed to and would have the information sent to his home computer.

8. On August 9, 2002, DSHS issued a Letter of Reprimand to Mr. Nickerson for his misuse of the Internet and e-mail. This letter will be removed from his personnel file in August 2003 if Mr. Nickerson commits no further violations of DSHS Administrative Policy 15.15 (Use of Electronic Messaging Systems and the Internet).

9. Mr. Nickerson understands that under RCW 42.52.480(1)(a) and (b), if the Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including: (a) repayment of any damages that resulted from his conduct; and (b) a civil penalty of up to \$5000, 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)..

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

2. 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. DSHS Administrative Policy 15.15 prohibits agency staff from using state-provided electronic messaging systems and the Internet in a manner prohibited by WAC 292-110-010. The policy further prohibits staff from using the state-provided Internet access to participate in non-business related list servers or newsgroups and creating, posting, transmitting, connection to or voluntarily receiving obscene, pornographic, offensive, libelous, threatening or harassing material. Employees are not to create, forward or store electronic messages that do not pertain to the state's business.

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: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) 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 Mr. Nickerson received a letter of reprimand that will remain in his personnel file for approximately one year, providing that no other violations occur.

D. RESOLUTION

1. Mr. Nickerson admits that he violated provisions of RCW 42.52.160 when he used his state computer to access websites relating to movies, sports, jokes, auctions, department stores, and automobiles. Mr. Nickerson further admits that this use exceed the de minimis standards under WAC 292-110-010(3) and violated DSHS Administrative Policy 15.15.

2. Mr. Nickerson admits that he violated provisions of RCW 42.52.160 when he accessed pictures of the Sonics basketball team, the Seahawks cheerleaders, automobiles, pictures from a party, and adult-oriented material. Mr. Nickerson further admits that this use exceed the de minimis standards under WAC 292-110-010(3) and violated DSHS Administrative Policy 15.15.

3. Mr. Nickerson admits that he violated provisions of RCW 42.52.160 when he sent personal e-mail containing inappropriate content to co-workers, friends, family and outside agencies using his state computer. Mr. Nickerson further admits that this use exceeded the de minimis standards under WAC 292-110-010(3) and violated DSHS Administrative Policy 15.15.

4. Recognizing that he is personally responsible for his conduct, Mr. Nickerson will pay a civil penalty pursuant to RCW 42.52.480(1)(b) in the amount of one thousand five hundred dollars (\$1,500.00). The Board agrees to suspend five hundred dollars (\$500.00) of the civil penalty on the condition that Mr. Nickerson complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW.

5. The civil penalty in the amount of one thousand dollars (\$1,000.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in ten (10) equal installments of one hundred dollars (\$100.00) with the first payment due on July 31, 2003, and the last 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.

6. Mr. Nickerson will attend Board approved Ethics training within six months 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 James Nickerson 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 James Nickerson 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 ~~\$1,000.00~~ ^{1,000.00} and compliance with all other conditions of this Stipulation. James Nickerson 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.

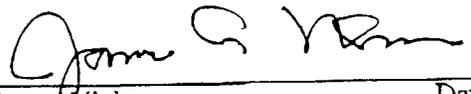
2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between James Nickerson and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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.

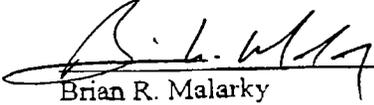
IV. CERTIFICATION

I, James Nickerson, 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 voluntarily agree to this Stipulation.

 07-02-03.

James Nickerson Date
Respondent

Stipulated to and presented by:

 July 2, 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

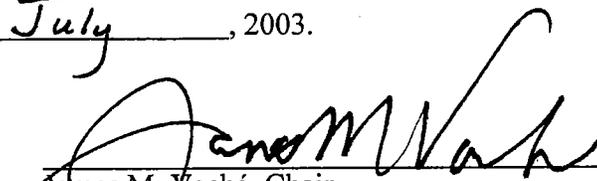
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ACCEPTED in its entirety;

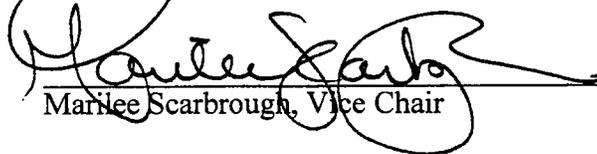
REJECTED in its entirety;

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

DATED this 11th day of July, 2003.



James M. Waché, Chair



Marilee Scarbrough, Vice Chair

Laquita Fields, Member



Paul Zellinsky, Member

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

James Nickerson, Respondent

Date