BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

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| In the Matter of:<br><br>RAEANNE MITCHELL,<br><br>Respondent. | NO. 02-63<br><br>STIPULATED FACTS,<br>CONCLUSIONS AND ORDER |

## I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, RAEANNE MITCHELL, 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 July 18, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Raeanne Mitchell, an employee of the State of Washington, Department of Labor and Industries (L&I), used state resources for non-work related purposes. 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. Raeanne Mitchell 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. Raeanne Mitchell recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Mitchell 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. Raeanne Mitchell 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 Raeanne Mitchell 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. Mitchell 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 Raeanne Mitchell 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 Raeanne Mitchell does not accept the Board's proposed modification(s), if any, Ms. Mitchell 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. Mitchell 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 Raeanne Mitchell as a Financial Analyst. L&I has employed Ms. Mitchell since June 2000.

2.2. Raeanne Mitchell created and stored non-work related documents on her state computer. These documents included: crochet instructions, two recipes, a personal check register spreadsheet, a personal workout spreadsheet, a resume and state job application for a family member, one joke and two personal letters.

2.3. Raeanne Mitchell accessed the following non-work related Internet sites: United Parcel Service package tracking, Internal Revenue Service, The Best of Publications, Inc., University of Phoenix, Aisleofview.com, PJ Hummel & Co., All About Arthritis.com, National Association of Tax Professionals, federal employees insurance program homepage and the U.S. Department of Education-Student Loan. Several of the sites were accessed for school purposes.

2.4. Raeanne Mitchell communicated with her husband through her state e-mail system and accessed her personal Yahoo account from her state computer.

2.5. Raeanne Mitchell is pursuing a master's degree from the University of Phoenix, which offers on-line classes. Ms. Mitchell's pursuit of the master's degree is not a requirement for her position and is not required in her performance evaluation; however, Ms. Mitchell is receiving tuition reimbursement benefits from the State as she successfully completes each course.

Ms. Mitchell's supervisor approved her request to register for classes on line; however, Ms. Mitchell did not receive approval to use her state computer for any other school purpose.

2.6. Raeanne Mitchell used her state computer to conduct research, make school notes and access various university web pages, including university folders and her individual course list. She used her state e-mail to forward study course overviews, assignments, completed school papers and other personal documents to her personal Yahoo e-mail account.

2.7. Raeanne Mitchell's e-mail from July 27, 2001 to April 12, 2002 revealed 324 personal messages.

2.8. Between December 4, 2001 and April 4, 2002, Raeanne Mitchell made 82 personal telephone calls to toll free numbers.

2.9. 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. The notifications that Raeanne Mitchell received were dated August 3, October 22, and December 13, 2001, and March 12, 2002.

2.10. 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.

2.11. 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."

2.12. On December 13, 2002, L&I issued a reprimand letter to Raeanne Mitchell for her personal use of the state computer detailed above. The reprimand letter states that Ms. Mitchell violated L&I policy when she accessed non-work related sites for school purposes, retrieved lectures, questions and assignments, received grades via the internet, and used state e-mail to

communicate with University technical services and other students. The letter of reprimand will be removed from Ms. Mitchell's personnel file on December 13, 2004 if no additional violations occur.

## Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Raeanne Mitchell 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 2.11, Raeanne Mitchell 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 Ms. Mitchell 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. Mitchell received a written reprimand letter as a result of this conduct (WAC 292-120-030(4)(a)).

## Section 4: AGREED ORDER

4.1. Raeanne Mitchell will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Ms. Mitchell will also pay a civil penalty in the amount of seven hundred fifty dollars ($750.00). The Board agrees to suspend $250.00 of the civil penalty on the condition that Ms. Mitchell 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 $500.00 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, Raeanne Mitchell, 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.

Please allow me to make payment of $100 per month until paid

8/29/03

Raeanne Mitchell Date
Respondent

Stipulated to and presented by:

9/04/03

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):

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DATED this 12th day of September, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

_____

Raeanne Mitchell, Respondent Date