BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: ROBERT MURPHY Respondent	NO. 02-64 REQUEST TO AMEND STIPULATION AND ORDER

I. STIPULATION

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

On September 12, 2003, the Board approved a Proposed Stipulation and Order regarding the matter referenced above. Under the modified Stipulation and Order, Robert Murphy agrees to add the following paragraph to Section 4: Agreed Order:

> 4.2 The civil penalty in the amount of ~~one thousand~~ 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 Robert Murphy'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: ROBERT MURPHY, Respondent.	NO. 02-64 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ROBERT MURPHY, 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 Robert Murphy, an employee of the State of Washington, Department of Labor and Industries (L&I), used his state computer to surf the Internet and play games. 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. Robert Murphy 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. Robert Murphy recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Murphy 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. Robert Murphy 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 Robert Murphy 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. Murphy 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 Robert Murphy 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 Robert Murphy does not accept the Board's proposed modification(s), if any, Mr. Murphy 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. Murphy 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 Robert Murphy as a Financial Analyst 5. L&I has employed Mr. Murphy since 1999.

2.2. Robert Murphy's state computer contained non-work related documents such as recipes, articles, personal letters, a personal finance spreadsheet and cartoons. Further Mr. Murphy had personal photographs loaded on his state computer.

2.3. Robert Murphy accessed the following Internet websites for non-work related purposes: Immigration Super Highway, the Gorge Amphitheater, E-Bay, Bumpershoot, Ticketmaster, various news/sports sites, Continental Airlines and Expedia Travel. Mr. Murphy accessed 99.9 FM, Your Personal Trading, GO Entertainment, KNDD 107.7, KZOK 102.5, Seattle Mariners Official Website, Tacoma Sabercats Hockey, KZOK 102.5 FM, Yahoo Auctions, Amazon.com, music, Hotmail, angelefire.com.sports, recipes, and Roxy!Olympia.

2.4. Robert Murphy had photographs of his wife and a collage of wedding photos on his state computer. Mr. Murphy e-mailed the folder containing these pictures to a coworker at a previous job and that coworker then forwarded the pictures to Mr. Murphy when he started employment with L&I. Mr. Murphy did not received prior approval from L&I; therefore, L&I

computer technicians were unable check for viruses to protect the integrity of the L&I computer system.

2.5. Robert Murphy accessed his personal hotmail account from his state computer. Mr. Murphy used the e-mail system to send jokes, trivia, history and sports information. He also accessed crossword puzzles from the Internet and worked on them using his state computer at noontime.

2.6. From November 12, 2001 to April 11, 2002, Robert Murphy's e-mail communications revealed almost daily personal use of the e-mail, including jokes, sports, personal meetings and events in history. Mr. Murphy also sent messages to his hotmail account. His mail folders contained 240 e-mails related to non-work related subjects.

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. Mr. Murphy received the notifications dated 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 December 12, 2002, L&I issued a reprimand letter to Robert Murphy for his personal use of the state computer as detailed above. The letter of reprimand will be removed from Mr. Murphy's personnel file on December 12, 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 Robert Murphy 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, Robert Murphy 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 Mr. Murphy intentionally committed the violations with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)). It is a mitigating factor that Mr. Murphy received a written reprimand letter as a result of his conduct (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. Mr. Murphy will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Mr. Murphy 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 Mr. Murphy 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, Robert Murphy, 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.

Robert Murphy 9/2/03
Robert Murphy Date
Respondent

Stipulated to and presented by:

B. R. Malarky Sep 03, 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

__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):

_____

_____

_____

_____

DATED this 12th day of September, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

_____

Robert Murphy, Respondent Date