BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: RAYMOND NEWCOMB, Respondent.	No. 03-082 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Raymond Newcomb, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through KENT NAKAMURA, Interim 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 11, 2003, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Raymond Newcomb, an employee of the State of Washington, Department of Transportation (DOT), used a state laptop computer and Internet service for outside work, personal projects, stock trading and to view adult-oriented material. The Executive Ethics Board reviewed this referral and issued a complaint on January 12, 2004.

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. Raymond Newcomb 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. Raymond Newcomb recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Newcomb 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. Raymond Newcomb 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 Raymond Newcomb 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. Newcomb 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 Raymond Newcomb 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 Raymond Newcomb does not accept the Board's proposed modification(s), if any, Mr. Newcomb 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. Newcomb 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, DOT employed Raymond Newcomb as a Information Technology Manager. Mr. Newcomb was a state employee for approximately 11 years.

2.2. A review of Raymond Newcomb's computer revealed 32 personal documents related to stocks, personal finances, horses, listings of homes and personal tax information. The computer also contained 16 personal photos of horses and 281 personal e-mail messages that had been sent and received through the computer using a private e-mail account. The computer also contained 2,071 adult-oriented graphic files and 67 video clip files, 64 of which were adult-oriented. Mr. Newcomb also accessed and participated in chat rooms through his private e-mail account.

2.3. Mr. Newcomb configured the state laptop computer in order to access his private Internet service provider. He used word processing and spreadsheet programs to create and download personal documents. He downloaded software to complete his tax return. He used his

private Internet service to do stock research and to access other no-work related web sites. Although Mr. Newcomb owned a personal business, no evidence was found to show that Mr. Newcomb used the state computer to trade or purchase commodities or engage in his personal outside business.

2.4. Mr. Newcomb created 22 folders on his state laptop computer for storing adult-oriented graphics and videos.

2.5. DOT has an internal policy that addresses the private use of state resources. Executive Order Number E 1021.00 *Employee Use of Electronic Communication Systems* and Executive Order Number IL 4027.01 *Ethics Compliance* address these issues.

> Executive Order Number E 1021.00 III:
>
> B – Prohibited Use Established…
>
> No downloading of software or files via the Internet for personal use …
> No use to access, transmit, display, chat, or post on the Web sexually explicit content …
>
> Executive Order Number II. 402701 II:
>
> A – Emphasize Appropriate Use of State Resources
>
> Employees are always expected to comply with the Ethics Law. For the coming year, special emphasis is placed on the appropriate use of state resources by employees. Managers and supervisors are expected to close any gaps in employee knowledge of the Ethics Law …

2.6. Mr. Newcomb resigned his position as Information Technology Manger with DOT effective July 28, 2003.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Raymond Newcomb 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(1) 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. Based on Findings of Fact 2.1 to 2.5, Raymond Newcomb used state resources in violation of RCW 42.52.160 and agency policy. Mr. Newcomb's use of the Internet to pursue personal interests, send and receive personal e-mail and access and view adult-oriented videos and websites violated the Ethics in Public Service Act and agency policy.

3.5. 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.

3.6. It is an aggravating factor that: (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)).

3.7. It is a mitigating factor that Mr. Newcomb resigned his position (WAC 292-120-040(4)(a)).

Section 4: AGREED ORDER

4.1. Raymond Newcomb will pay a civil penalty in the amount of two thousand dollars ($2,000.00). The Board agrees to suspend $500.00 of the civil penalty on the condition that Mr. Newcomb complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The civil penalty due of one thousand five hundred dollars ($1,500.00) 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, Raymond Newcomb, 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.

2-20-05

Raymond Newcomb Date
Respondent

Stipulated to and presented by:

3/11/05

Kent Nakamura Date
Interim 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;

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

_____

_____

_____

DATED this 11 day of March 2005.

Paul Zellinsky (EBM)
Paul Zellinsky, Chair

Trish Akana
Trish Akana, Vice Chair

Marilee Scarbrough, Member

Evelyn Yenson, Member

Judith Golberg
Judith Golberg, Member

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

_____
Raymond Newcomb, Respondent Date