BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DEITRA GARRETT, Respondent.	No. 03-083 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Deitra Garrett, 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 May 2, 2003, the Executive Ethics Board received a complaint alleging that Deitra Garrett, an employee of the State of Washington, Employment Security Department (ESD) used state time and equipment to create, forward and print non-work related materials. On May 5, 2003, the Board received a referral from the State Auditor's Office (SAO) containing the same allegations. The Executive Ethics Board issued a complaint in November 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. Deitra Garrett 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. Deitra Garrett recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Garrett 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. Deitra Garrett 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 Deitra Garrett 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. Garrett 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 Deitra Garrett 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 Deitra Garrett does not accept the Board's proposed modification(s), if any, Ms. Garrett 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. Garrett 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, ESD, employed Deitra Garrett as a WorkSource Specialist 3. Ms. Garrett was hired by ESD on February 1, 2001. Ms. Garrett has been a state employee since August 20, 1984.

2.2. A review of Ms. Garrett's state computer usage from October to November 2000 revealed personal use of e-mail and computer resources. The computer contained 37 personal messages in her "Sent Items" folder, 14 personal messages in her "In Box" and 252 personal messages in her "Deleted Items" folder. The messages consisted of poems, jokes, chain letters, a computerized demonstration and conversations with family members. Ms. Garrett's Internet use revealed access to sites for other than work-related matters. Some of these sites visited include games, retail outlets and recipes. Ms. Garrett's computer hard drive revealed personal documents that included a party invitation and guest list, personal letter, articles and a joke.

2.3. Ms. Garrett attended ethics training on March 8, 2001 and April 22, 2003.

2.4. On February 2, 2001, Ms. Garrett signed an acknowledgement of ESD Policy 1016 Employee Conduct and Policy 1002 Conflict of Interest. These policies prohibit uses of technology and telecommunications systems for such activities as:

- Accessing the Internet for personal reasons;
- Furthering inappropriate jokes, chain letters or gender slurs;
- Advertising, selling or for any other commercial purpose;
- Conducting an outside business or engaging in personal activities;
- Making personal purchases;

- Promoting a political, philosophical or religious belief;
- Writing documents of a personal nature, including but not limited to, novels, plays, memoirs, letters, etc.

2.7. On August 28, 2003 ESD suspended Ms. Garrett from her position as a WorkSource Specialist effective on September 4, 2003 to the end of her work shift on September 5, 2003 for her misuse of state resources.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Deitra Garrett 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. The Ethics in Public Service Act allows for de minimis 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, Ms. Garrett used state resources in violation of RCW 42.52.160, WAC 292-110-010 and agency policy. Ms. Garrett's use of her state computer to pursue personal interests violated agency policy and exceeded the de minimis standards.

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 Ms. Garrett was suspended for her job for two days resulting in a $271.27 income loss (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. Deitra Garrett will pay a civil penalty in the amount of seven hundred and fifty dollars ($750.00). The Board agrees to suspend $250.00 of the civil penalty on the condition that Deitra Garrett complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW.

4.2. The civil penalty of $500.00 is payable to the state Executive Ethics Board in ten equal monthly installments of fifty dollars ($50.00) beginning on September 30, 2004, and ending with the last payment on June 30, 2005.

CERTIFICATION

I, Deitra Garrett, 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.

Deitra A Garrett 8/30/04
Deitra Garrett Date
Respondent

Stipulated to and presented by:

B. R. Malarky 9/7/04
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 10th day of September, 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yenson, Member

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

_____

Deitra Garrett, Respondent Date