BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DIANE deLEON, Respondent.	No. 03-121 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Diane deLeon, 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 September 25, 2003, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Diane deLeon, an employee of the State of Washington, Department of Social and Health Services (DSHS), used her state computer, e-mail and Internet for personal use. The Executive Ethics Board reviewed this referral and issued a complaint in February 13, 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. Diane deLeon 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. Diane deLeon recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. deLeon 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. Diane deLeon 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 Diane deLeon 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. deLeon 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 Diane deLeon 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 Diane deLeon does not accept the Board's proposed modification(s), if any, Ms. deLeon 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. deLeon 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, DSHS employed Diane deLeon as a Contracts and Purchasing Agent.

2.2. A review of Ms. deLeon's state computer usage between May 7 and May 30, 2003 revealed that Ms. deLeon used her work computer to access Internet sites for personal reasons unrelated to her work. Ms. deLeon accessed websites related to her condominium, various domestic pet and medical sites, including an on-line pharmacy, Safeco, Mariners, Ticketmaster, various music websites, various court websites, surfed various city and county employment websites, and accessed a department store account. Ms. deLeon also communicated with a family member through instant messaging two to three times a week for at least 10 minutes each time. A buddy list containing over 100 names was also found on the computer.

2.3. DSHS Administrative Policy 15.15, *Use of Electronic Messaging Systems and the Internet*, states in part: "Department staff may use electronic messaging systems and Internet access to conduct business that is reasonably related to official state duties. Department

employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet, if the use does not interfere with the performance of the employee's official duties. Department staff may not use state provided Internet access to participate in non-business related Instant Messaging."

2.4. Diane deLeon attended Ethics training on April 18, 2002. Ms. deLeon also signed the DSHS Internet Access Request and Agreement form in August 2001. In July 2002 she signed a DSHS policy review form stating that she read and understood DSHS Administrative Policy 6.04 *Standards of Ethical Conduct for Employees* and Policy 15.15.

2.5. On November 10, 2003, DSHS issued a letter of reprimand to Ms. deLeon for her inappropriate use of her state assigned computer.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Diane deLeon 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 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 2.4, Ms. deLeon used state resources in violation of RCW 42.52.160, WAC 292-110-010 and agency policy. Ms. deLeon'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.

3.7. It is a mitigating factor that DSHS issued a letter of reprimand to Ms. deLeon as a result of her personal use of the state computer. WAC 292-120-030(4)(a).

Section 4: AGREED ORDER

4.1. Diane deLeon will pay a civil penalty in the amount of five hundred dollars ($500.00). 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, Diane deLeon, 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.

8/16/04

Diane deLeon Date
Respondent

Stipulated to and presented by:

8/25/04

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, Diane deLeon, accept/do not accept (circle one) the proposed modification(s).

_____

Diane deLeon, Respondent Date