BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of	)	
	)	No. 98-08
CYNDY D. BRUNKEN	)	
	)	STIPULATION AND ORDER
	)	

Pursuant to WAC 292-100-090 this Stipulation is entered into between CYNDY D. BRUNKEN, an employee of Washington State University (WSU), and the State of Washington Executive Ethics Board ("Board") by and through MARGARET A. GRIMALDI, Executive Secretary. The following findings, conclusions, and agreements will be binding upon parties to this Stipulation, if the Stipulation is fully executed, and if accepted by the Board, and not otherwise.

I. STIPULATED FACTS

1. The Board filed the above referenced complaint on July 22, 1998, against Cyndy Brunken, an employee of WSU. The Board issued this complaint pursuant to a whistleblower report by the State Auditor.

2. It is agreed that:

(a) Ms. Brunken used state-owned equipment, including a desktop computer and portable laptop computer, during working and non-working hours for personal use;

(b) Ms. Brunken's personal use of state resources amounted to more than 300 hours of state time and exceeded de minimis use standards as defined under WAC 292-110-010;

(c) Ms. Brunken agrees her conduct violated RCW 42.52.160(1) which states:

> No state officer or state employee may employ or use any person, money, or 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. The following factors mitigate in Ms. Brunken's favor in setting the appropriate penalty in this case:

(a) Ms. Brunken accepted discipline from WSU in the form of a reduction in pay of $3636 for her misuse of the computer;

(b) Ms. Brunken was cooperative in the Board's investigation of this complaint; and,

(c) Ms. Brunken had no previous ethics violations.

II. STIPULATED CONCLUSIONS OF LAW

1. The Washington State Executive Ethics Board has jurisdiction over Ms. Brunken and over the subject matter of the complaint.

2. The Washington State Executive Ethics Board has reasonable cause to believe that Ms. Brunken, as described in the stipulation of facts, violated RCW 42.52.160(1) by her personal use of state resources.

III. STIPULATED PENALTY

As a consequence of having violated RCW 42.52.160(1), Ms. Brunken agrees to pay restitution to WSU in the amount of two thousand dollars ($2000) for the value of lost pay and benefits. Ms. Brunken also agrees to pay the Board a civil penalty in the amount of three thousand dollars ($3000.00) pursuant to RCW 42.52.480(1)(b). The Board agrees to suspend two thousand dollars ($2000) of the civil penalty, provided Ms. Brunken complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of five years from the date this Stipulation and Order is accepted by the Board.

IV. AGREEMENT

1. The signatory parties, including the Executive Secretary, the Board, and Cyndy Brunken (the parties) agree that Ms. Brunken will:

(a) Pay the amount of one thousand dollars ($1000.00) to the Washington State Executive Ethics Board in the form of four equal payments of $250 each. All payments shall be made payable to the *State of Washington.* The first payment shall be due on July 15, 1999. The remaining payments will be due on or before October 15, 1999, January 15, 2000, and April 15, 2000.

(b) Pay restitution to Washington State University in twenty equal payments of one hundred dollars ($100.00) each, payable the 15th of each month, beginning in September 1999 and ending April 2001. All payments for restitution shall be made payable to *Washington State University.*

(c) Send all payments agreed to in this Stipulation and Order to the Executive Ethics Board at 1125 Washington Street SE, P.O. Box 40100, Olympia, WA 98504-0100.

2. Failure to make payments within the agreed terms of this Stipulation and Order will cause the entire balance owing to be due in full within thirty (30) days of the date a payment is missed.

3. Further ethics violations by Ms. Brunken within five years of the date of acceptance of this Order shall cause reinstatement of the full civil penalty in the amount of three thousand dollars ($3000) in addition to the initiation of an ethics complaint on any new allegations.

V. RELEASE AND EFFECTIVE ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Ms. Brunken from all further ethics proceedings under chapter 42.52 RCW arising out of the facts contained in this complaint. Ms. Brunken 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 Order.

2. This Stipulation and Order is not binding unless and until accepted by the Board, which may reject or propose modifying it.

3. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Ms. Brunken, Washington State University, the State of Washington, or other third party, which are now in existence or may be filed in the future.

4. If the Board proposes to modify this Stipulation, Ms. Brunken has the right to approve or not approve the modification. If the Board rejects the Stipulation or modifies it in a manner that is not acceptable to Ms. Brunken, the Stipulation becomes null and void, in which case the matter will be set for public hearing in accordance with the normal administrative process. The proposed Stipulation and Order obtained during formal settlement negotiations shall not be admitted into evidence at a subsequent public hearing.

VI. CERTIFICATION

I, CYNDY BRUNKEN, hereby certify that I have read this Stipulation and Order in its entirety; that I have had an opportunity to consult with legal counsel; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and agree to it; and that I do so voluntarily.

CYNDY D. BRUNKEN

4/6/99
Date

Stipulated to and presented by:

MARGARET A. GRIMALDI
Executive Secretary

March 30, 1999
Date

VII. ORDER

Having reviewed Complaint No. 98-03, the Stipulation, and the Agreement, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, HEREBY ORDER, that pursuant to WAC 292-100-080, the above is:

___✓___ Accepted in its entirety and becomes the Order of the Board.

_____ *Accepted and, if approved by Ms. Brunken, becomes the Order of the Board with the following modifications:

_____

_____

_____ Rejected in its entirety.

DATED this 9th day of April, 1999.

JANET LIM, Chair

Cheryl Rohret

CHERYL ROHRET, Vice Chair

Gwendolyn Foyd

GWENDOLYN FOYD, Member

SUTAPA BASU, Member

PAUL GILLIE, Member

*I accept or do not accept (circle option) the proposed modification.

_____ Date

_____ CYNDY D. BRUNKEN, Respondent