

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

KENNETH D. MENDE

Respondent.

NO. 99-32

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between KENNETH D. MENDE, Respondent, through his attorney, WILLIAM J. POWELL, and the EXECUTIVE ETHICS BOARD ("Board") through MARC D. DEFREYN, Assistant Attorney General.

A. FACTS AND LAW

1. **FACTS**

a. Kenneth D. Mende, Specialist 3 in the Disabled Veterans Outreach Program, Employment Security Department, violated the state's ethics laws by improperly using state resources to access unauthorized Internet sites and images during working hours, and in violation of RCW 42.52.160(1) and WAC 292-110-010.

b. Several witnesses indicated that they had observed Mr. Mende viewing inappropriate images for lengthy periods at his workstation.

c. In 1998, a supervisor verbally advised Mr. Mende that downloading the images violates agency policies. In 1999, the supervisor advised Mr. Mende in writing that downloading the images violated agency policies. A supervisor also indicated that he attended training with Mr. Mende in 1998 when Internet use was discussed, and that attendees were informed that the Internet could not be used for personal purposes.

d. An analysis of Mr. Mende's hard drive revealed that over 1400 "Classified 2000" adult advertisements with images were stored on his computer. Mr. Mende also had a

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Microsoft "hot mail" address, which could have been used to access personal e-mail messages. Mr. Mende asserts that this address was only used once. Mr. Mende often changed the agency's authorized default homepage from the "Spokane Work-Source Homepage" to the Microsoft Internet Explorer homepage. However, Mr. Mende asserts he used the Microsoft Internet Explorer homepage to track three (3) mutual funds in his deferred compensation plan.

e. In his August 7, 2000, Answer to Reasonable Cause, Mr. Mende admits accessing "Classified 2000" websites. Mr. Mende asserts that his supervisor showed him this site and that the computers in the Spokane Work-Source Office were not secure. Mr. Mende asserts that other persons at the agency had access to the computer at his workstation without the necessity of passwords.

f. The alleged violations occurred sometime between January 1, 1995, but not later than February 1, 2000. Mr. Mende asserts that he did not access "Classified 2000" web pages after September 27, 1999, and asserts that his access of the Microsoft Internet Explorer homepage was part of his official duties. The Executive Ethics Board has no evidence to confirm that Mr. Mende's access of "Classified 2000" web pages ceased on September 27, 1999.

2. APPLICABLE LAW

a. **RCW 42.52.160(1)** provides that no state employee may use state resources for private benefit or gain:

No state officer or state employee may employ or use any person, money, or other property under the officer's or employee's control or direction, or in his or her custody, for private benefit or gain of the officer, employee, or another.

b. Pursuant to **RCW 42.52.160(3)** the Executive Ethics Board adopted rules relating to occasional personal use of state resources. Under **WAC 292-110-010(5)(e)**:

A state officer or employee may not make private use of state computers or other equipment to access computer networks or other databases including, but not limited to, electronic mail and bulletin boards for personal use unrelated to an official business purpose.

B. RESOLUTION

1. Kenneth D. Mende admits that he violated provisions of chapter 42.52 RCW by using state resources for private benefit, as outlined above.

2. Kenneth D. Mende will pay a civil penalty and reimbursement of costs in the amount of fifty-eight hundred dollars (\$5800). The Board agrees to suspend twenty-eight hundred dollars (\$2800) on the condition that Mr. Mende complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of three (3) years from the date this Stipulation and Order is accepted by the Board.

3. Kenneth D. Mende will pay three hundred dollars (\$300) of this amount to the *State of Washington* which will be remitted to the Executive Ethics Board within thirty (30) days following approval of this Stipulation and Order by the Board. The remaining twenty-seven hundred dollars (\$2700) is payable in nine (9) equal installments of three hundred dollars (\$300) due on the last day of each month until paid in full. All payments must be made payable to the *State of Washington* and must be remitted to the Executive Ethics Board. Failure to make timely payments will cause the entire amount of the unpaid civil penalty and reimbursement costs, including the \$2,800 that was previously suspended, to become due and payable within ten (10) days of the missed payment.

4. Kenneth D. Mende will attend Washington State sponsored ethics training within six (6) months of the date this Stipulation and Order is accepted by the Board.

C. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kenneth D. Mende and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2), which states 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.

D. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Kenneth D. Mende from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty and reimbursement costs owed in the amount of three-thousand dollars (\$3,000.00) and compliance with all other conditions of this Stipulation. Kenneth D. Mende 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.

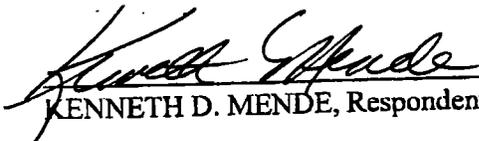
2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Kenneth D. Mende and the State of Washington Employment Security Department or other third party which are now in existence or may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

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E. CERTIFICATION

I, KENNETH D. MENDE, 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 voluntarily agree to this Stipulation.


KENNETH D. MENDE, Respondent

January 16, 2001
Date


WILLIAM J. POWELL, WSBA# 672
Attorney for Respondent

January 16, 2001
Date

Stipulated to and presented by:


MARC D. DEFREYN, WSBA #28318
Assistant Attorney General

January 25, 2001
Date

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

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ACCEPTED in its entirety;

REJECTED in its entirety;

*MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

DATED this 9th day of FEBRUARY, 2001.

JAMES M. VACHE by W-3-R
James M. Vaché, Chair

Laquita Fields, Vice Chair

SUTAPA BASU by W-3-R
Sutapa Basu, Member

CHERYL ROHRET by W-3-R
Rev. Cheryl Rohret, Member

I, _____, accept/do not accept (circle one) the proposed modification.

Respondent

Date

Attorney for Respondent

Date

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