

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

NO. 01-57

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between ██████████ and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

1. ██████████ is the Program Manager of the Automotive Department at Yakima Valley Community College (YVCC) and served in that capacity at all times material to the allegations herein.

2. ██████████ as Automotive Department Program Manager, purchased parts through the college account to repair a car belonging to his father. The car was repaired and removed from the shop before the parts were paid for.

3. ██████████ allowed family members to have their cars repaired by YVCC students in the Automotive Department, resulting in a cost savings to members of his family.

4. ██████████ used YVCC facilities to repair his own vehicles. The YVCC auto shop facilities were not available to members of the public to repair their own vehicles.

5. On August 27, 2001, the college notified ██████████ that he was not allowed to use college facilities and resources for personal benefits of any kind, and that he was not allowed to work on personal cars or other projects at the college. This corrective memorandum

represents the initial step in a personal corrective action plan regarding the conduct revealed in the State Auditor's report.

6. In response to an internal investigation involving [REDACTED] conduct, YVCC adopted new Automotive Department procedures regarding receiving work, waiting lists, work orders, fee schedules, donations, tools check-out, student projects, school vehicles, and competency cars.

B. APPLICABLE LAW

1. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

2. RCW 42.52.160(1) 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.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand, it is an aggravating factor that: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) the violations involved personal gain to [REDACTED] or his family (WAC 292-120-030(2)(f)).

2. It is a mitigating factor that: (1) [REDACTED] violations were unintentional (WAC 292-120-030(4)(d)); and (2) YVCC has acted regarding [REDACTED] conduct by issuing a corrective memorandum regarding his conduct and prohibiting his use of college facilities to work on personal vehicles (WAC 292-120-130(4)(a)).

D. RESOLUTION

1. [REDACTED] admits that he violated provisions of chapter 42.52 RCW by using state facilities to work on a personal vehicle, a violation of RCW 42.52.160, and by using his

position as Automotive Department Program Manager to secure special privileges for members of his family, a violation of RCW 42.52.070.

2. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW while employed by the state of Washington.

3. The total amount of the civil penalty is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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) that 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.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] 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. [REDACTED] 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 [REDACTED] and Yakima Valley Community College, the State of Washington, 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 will be inadmissible for any purpose in any other proceeding involving [REDACTED] the state, and/or third parties aligned with the state.

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

G. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.

[REDACTED]

Stipulated to and presented by.

B. R. Malarky 11/01/02
Brian R. Malarky, Executive Director 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

 X 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 November, 2002

Laquita Fields
Laquita Fields, Chair

Marilee Scarbrough
Marilee Scarbrough, Vice Chair

Sutapa Basu, Member

James M. Vache
James M. Vache, Member

Paul Zellinsky
Paul Zellinsky, Member

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

Respondent

Date

Attorney for Respondent

Date