

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

NO. 99-44

STIPULATION AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090 between ██████████ through her attorney, FREDRIC C. TAUSEND, 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 a former ESD employee. ESD hired ██████████ in 1984 and she resigned on January 23, 1997, but continues to be a state employee in another state agency. While employed by ESD, ██████████ was assigned to ESD's Contracts and Rules unit (Contracts Office). The Board's jurisdiction over the respondent and the conduct at issue began on January 1, 1995.

2. ESD hired Jeff Gonzales in 1983 as the full time Contracts and Regulations Administrator. Mr. Gonzales managed the Contracts Office. Mr. Gonzales hired ██████████ in 1984 as a Contracts Specialist. In 1988, Mr. Gonzales took a voluntary demotion to a Contracts Specialist 3, Step K (top step) in order to work part time (.6 FTE). In 1988, ██████████ became the Contracts and Regulations Administrator and supervisor of Mr. Gonzales. Mr. Gonzales resigned January 28, 1997.

3. As Mr. Gonzalez's supervisor, [REDACTED] exercised discretionary authority regarding Mr. Gonzales's daily working conditions, including but not limited to, weekly time reporting, job retention, performance reviews, salary, and work assignments.

4. Mr. Gonzales and [REDACTED] and their spouses entered into a real estate partnership on June 30, 1990. The partnership owns and operates property for the production of income and to provide a real estate investment to the partners. The real property is located in Portland, Oregon and each partner holds a 25% partnership interest. Each partner paid \$9,250.00 (\$18,500.00 per family) towards ownership with income, losses, tax benefits or credits shared equally. They continued to jointly own the property in 1995 when the ethics law took effect. This joint ownership still existed in January 1997 when [REDACTED] left her position at the Employment Security Department and ceased being Mr. Gonzales supervisor. [REDACTED] [REDACTED] asserts that during the years at issue (1995 through January 1997) she and Mr. Gonzales tried to sell the partnership property with no success.

5. [REDACTED] denies giving Mr. Gonzales preferential treatment in the form of promotions or salary increases and asserts that the only promotions or salary increases she gave Mr. Gonzales were those mandated by the legislature.

#### **B. APPLICABLE LAW**

1. RCW 42.52.020 states:

No state officer or employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's duties.

#### **C. AGGRAVATING & MITIGATING FACTORS**

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 have been reviewed. In the case at hand it is an aggravating factor that: (1) the alleged violation continued from 1995 through January 1997 (WAC 292-120-030(2)(a)); (2) the alleged violation could reduce the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); (3) the partnership involved potential personal gain to [REDACTED]

(WAC 292-120-030(2)(f)); and, (4) [REDACTED] incurred no other sanctions as a result of her alleged violations (WAC 292-120-030(3)(f)).

2. It is a mitigating factor that: (1) the partnership agreement and the ownership of the real property began five years before the enactment of RCW 42.52; (2) [REDACTED] and Mr. Gonzales attempted to sell their jointly held property between 1995 and 1997; (3) [REDACTED] has cooperated in the Board's investigation of this matter (WAC 292-120-030(4)(e)); (4) Mr. Gonzales received no preferential treatment and his salary increases were mandated by the legislature; and (5) [REDACTED]'s conduct in this matter was unintentional and unknowing.

### C. RESOLUTION

1. [REDACTED] maintains that the alleged violation of RCW 42.52.020 was unknowing and unintentional, but agrees to settle and resolve the charged violation as hereinafter provided.

2. [REDACTED] agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The Board agrees to suspend five hundred dollars (\$500.00) 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. The \$500.00 amount is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board. Failure to make timely payment will cause the entire amount of the civil penalty of \$1,000.00 to become due and payable within ten (10) days of the missed payment.

### D. 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), 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 [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 owed in the amount of \$1,000.00 (\$500.00 suspended), and compliance with all other conditions of this Stipulation. [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 Jan McMullen and the Employment Security Department, the State of Washington, or other third party, which may now be 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, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; 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]  
Respondent


FREDRIC C. TAUSEND  
Attorney for Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Stipulated to and presented by:

  
BRIAN R. MALARKY  
Executive Director

  
RICHARD A. McCARTAN  
Assistant Attorney General

July 9, 2001

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E. CERTIFICATION

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

[REDACTED]  
Respondent

*Fredric C. Tausend*  
FREDRIC C. TAUSEND  
Attorney for Respondent

*July 11, 2001*  
Date

*July 10, 2001*  
Date

Stipulated to and presented by:

*Brian R. Malarky*  
BRIAN R. MALARKY  
Executive Director

RICHARD A. McCARTAN  
Assistant Attorney General

*July 9, 2001*  
Date

Date

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ETHICS BOARD

**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 13<sup>th</sup> day of July, 2001.

*[Faint, mostly illegible text from the reverse side of the page, including "I, \_\_\_\_\_, Secretary of the Executive Ethics Board..."]*

James M. Vaché  
James M. Vaché, Chair

Laquita Fields  
Laquita Fields, Vice Chair

Sutapa Basu  
Sutapa Basu, Member

Marilee Scarbrough  
Marilee Scarbrough, Member

Cheryl L. Rohret  
Rev. Cheryl Rohret, Member

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

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for Respondent

\_\_\_\_\_  
Date