

**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

████████████████████

Respondent.

NO. 01-02

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ with his attorneys, GORDON, THOMAS, HONEYWELL, MALANCA, PETERSON & DAHEIM, LLP, and MARK G. HONEYWELL, and the Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (“Board”), with its attorneys, CHRISTINE O. GREGOIRE, Attorney General and ROBERT C. HARGREAVES, Assistant Attorney General. 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 any Board proposed modification(s) to the stipulation.

Section 1: PROCEDURAL FACTS

1.1 The Board filed a complaint in this matter against ██████████ on February 9, 2001. The complaint was based on a special audit referral from the office of the Washington State Auditor.

1.2 On January 11, 2002, upon receiving the Board staff’s investigative report and recommendation, the Board made the determination that there was reasonable cause to believe that ██████████ had committed one or more violations of chapter 42.52 RCW, and that the potential penalty was in excess of \$500. The

reasonable cause determination was based on alleged violations of RCW 42.52.020, .030, .120 and .160.

1.3 [REDACTED] filed a written response to the reasonable cause determination, in which he denied committing any violations of chapter 42.52 RCW. [REDACTED] also exercised his right under WAC 292-100-060(5) to request that an administrative law judge conduct the hearing on the alleged violations of RCW 42.52.

1.4 A hearing date of October 10, 2002 was established in this matter by the assigned administrative law judge in a pre-hearing conference order dated July 9, 2002. [REDACTED] understands that the Board staff will be prepared to proceed to hearing on the alleged violations of RCW 42.52 enumerated in the reasonable cause determination, except RCW 42.52.160(1), which will not be pursued. [REDACTED] understands that he has the right to defend himself against these allegations by presenting evidence and argument at the hearing.

1.5 [REDACTED] understands that if the 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 \$5000, 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.

1.6 Without admitting to any of the allegations upon which the reasonable cause determinations were made, [REDACTED] nevertheless recognizes that there exists a likelihood that the Board staff has evidence from which the Board may conclude that [REDACTED] violated RCW 42.52.020, even if only unintentionally or unknowingly. 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.

1.7 [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s)

proposed by the Board, pursuant to the provisions of WAC 292-100-090(2), which provides in pertinent 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.

1.8 If the Board accepts this stipulation, the Board will release and discharge [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 imposed hereunder in the amount of \$1,500.00, plus payment of \$1,000 in investigation costs and compliance with all other conditions of this stipulation. [REDACTED] 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 order.

1.9 If the Board rejects this stipulation, or if [REDACTED] does not accept any modification(s) proposed by the Board, [REDACTED] waives any objection to participation at the hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this proposed stipulation and information obtained during formal settlement discussions 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, the Washington State Department of Transportation employed [REDACTED] [REDACTED] as the Chief Naval Architect for the Washington State Ferry system. [REDACTED] [REDACTED] a graduate of the US Naval Academy, Annapolis, MD, served on active duty with the US Navy from 1960 to 1980, when he retired with rank of Commander. From 1980 to 1988 he worked as a naval architect for various firms in Seattle and Bremerton, before being hired as the Chief Naval Architect for Washington State Ferries (WSF) in October 1988.

2.2 During his time as the Chief Naval Architect for WSF, [REDACTED] developed expertise in vessel wake wash measurement and analysis. The requirement for measuring wake wash was an outgrowth of complaints over the effects of the wake of ferries placed in service by WSF in 1991. At that time, there was very little technical information or expertise available on wake wash measurement in the field of naval architecture generally.

2.3 In developing wake wash measurement expertise, at times [REDACTED] worked with, among others, Kenneth Fox, a naval architect employed by Art Anderson Associates (AAA), a firm that was under contract to provide naval architectural services for WSF. When Mr. Fox retired from AAA in 1996 and went into private consulting practice, WSF continued to use his services as a subcontractor for AAA.

2.4 Under AAA's contract with WSF, agreement No. Y-5801, a task assignment, denominated Task No. A3, was made with a task start date of May 24, 1994. This task involved performing a passenger only ferry project study for WSF, in which Kenneth Fox participated. Through a series of amendments, the task end date for task A3 was extended to January 31, 1997. Throughout the duration of task A3, [REDACTED] [REDACTED] was assigned by WSF as the task manager for task A3.

2.5 The duties of a WSF task manager on contract task assignments, such as task A3, normally includes defining the scope of work, negotiating compensation, overseeing the accomplishment of the work assigned, and approving payment on the billings submitted by the contractor. On task A3, as it related to Mr. Fox's participation, [REDACTED] responsibilities were limited to reviewing and approving payment on billings submitted by Mr. Fox. The work Mr. Fox performed on the study project was done directly for the chief executive officer of WSF, who established the scope of Mr. Fox's project work and compensation, and who also directly oversaw accomplishment of the work.

2.6 [REDACTED] approved payment to Mr. Fox on a number of billings for services submitted under task A3 during November and December 1996, and in January 1997, at a time when [REDACTED] and Mr. Fox were engaged in a business relationship performing wake wash studies for clients other than WSF. [REDACTED] supervisors at WSF were aware of and approved his outside employment, which began in October 1996. [REDACTED] was not responsible for any amendments that carried the term of task A3 into the period of his outside business relationship with Mr. Fox, nor is there any indication that Mr. Fox did not in fact perform the services for which he submitted bills under task A3.

Section 3: CONCLUSIONS OF LAW

3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 under WAC 292-100-090(2), as quoted in pertinent part in paragraph 1.7, above.

3.3 Based on Findings of Fact 21 through 2.6, above, the Board concludes that [REDACTED] violated RCW 42.52.020, which provides:

No state officer or state 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 official duties.

3.4 Based on Findings of Fact 21 through 2.6, and on Conclusions of Law 3.1 through 3.3, above, the Board may impose sanctions under the provisions of RCW 42.52.480, which under subsection (1)(b) includes a civil penalty of up to five thousand dollars (\$5,000) for each violation of chapter 42.52 RCW found.

Section 4: AGREED ORDER

██████████ will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500), together with investigation costs in the amount of one thousand dollars (\$1,000), payment of which shall not reduce the penalty amount owed. This amount is payable to the State of Washington, Executive Ethics Board within ten (10) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, ██████████ hereby certify that I have read this stipulation and agreed order in its entirety, and that my counsel has fully explained its legal significance to me. I knowingly and voluntarily waive my right to a hearing in this matter, and I fully understand and voluntarily agree to this stipulation.

Respondent

Mark G. Honeywell, WSBA #01567
Attorney for Respondent

Date

Date

Stipulated to and presented by:

Brian R. Malarky
Executive Director

Date

Robert C. Hargreaves, WSBA #08761
Assistant Attorney General

Date

II. ORDER

Having reviewed the foregoing Stipulation, the WASHINGTON STATE EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDERS that the Stipulation is

_____ 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 _____ day of _____, 2002.

Laquita Fields, Chair

Marilee Scarbrough, Vice Chair

Sutapa Basu, Member

James M. Vache, Member

Paul Zellinsky, Member

*I, _____, accept / do not accept (circle one) the Board's proposed modification of the Stipulation.

Respondent

Date

Attorney for Respondent

Date