

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

████████████████████

NO. No. 99-13

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between ██████████ ██████████ through his attorney, LeAnn McDonald, and the EXECUTIVE ETHICS BOARD ("Board") through Marc D. Defreyn, Assistant Attorney General. 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. ██████████ has been Chair/Program head of the Culinary Arts Department ("Department") of the Edmonds Community College ("EdCC") for the last 11 years and oversees almost all aspects of the program with supervision from EdCC Administration. In May 1998, ██████████ suffered a stroke and was unable to work until the fall of the same year.

2. Mr. John Casey is a Culinary Arts Instructor and Manager of the Fine Dining Room at EdCC. As Manager of the Fine Dining Room, Mr. Casey's duties include scheduling dining room use and overall monitoring and overseeing of the Fine Dining Room. During ██████████ ██████████ medical leave of absence, Mr. John Casey became the Acting Chair of the Culinary Arts Department at EdCC.

3. While employed as Chair/Program head of the Department, ██████████ gave a private citizen, Mrs. Kathy Casey, wife of Mr. John Casey, access to Department facilities. Ms. Casey was and continues to be a member of the Culinary Arts Department's Advisory Board.

Mrs. Casey rented the facilities for the use of her private, for-profit business, a menu-developing/restaurant enhancement consultancy. Between 1995 – 1998, Mrs. Casey was allowed to rent Department facilities at the rate of \$50.00 per day, including the Department's Fine Dining Room. Mrs. Casey was also allowed to rent a portion of the Department's walk-in refrigerator and freezer for \$100.00 per month. The funds Mrs. Casey paid were deposited in a Department account.

4. WAC 132Y-136-201, promulgated in 1982, states that college property available for scheduling (renting) "shall be limited to" classrooms, laboratories, conference rooms, gymnasiums, dining halls, student lounges, libraries, playing fields, and unassigned office space. While allowing rental of the Department's Fine Dining Room, the rule does not allow for rental of the Department's kitchen, refrigerator, or freezer.

5. An extensive EdCC fee structure policy issued in 1994 established rental rates for various facilities, including a rate of \$175 - \$230 for use of the Department's Fine Dining Room, by private, for-profit users. Mrs. Casey did not pay the established rate for the Fine Dining Room.

6. [REDACTED] allowed Mrs. Casey to use the Department's bulk supplies (such as flour and sugar) for her private business. [REDACTED] allowed Mrs. Casey to replace these items on the honor system. No records were kept of these transactions.

7. The activities and conduct noted above continued until EdCC was notified of the violations by the Washington State Auditor's Office in August/September 1998.

8. From the time EdCC was notified of the violation in August/September 1998 until present, [REDACTED] has not received, nor been subjected to, any departmental discipline or other sanctions related to this matter.

9. Upon learning in August/September 1998 that the facts recited above could be construed as an ethics violation, EdCC Administration stopped Ms. Casey's private use of EdCC facilities at less than market rates and [REDACTED] attended Washington State sponsored ethics training.

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:

(1) 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 violation was continuing in nature (WAC 292-120-030(2)(a)); (2) the violation could significantly reduce the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)) (3) [REDACTED] has significant supervisory responsibility (WAC 292-120-030(3)(d)); and (4) [REDACTED] has incurred no other sanctions as a result of his violations (WAC 292-120-030(3)(f)).

2. It is a mitigating factor that: (1) EdCC was partially reimbursed by Mrs. Casey for her private use of EdCC facilities; (2) [REDACTED] has not personally benefited from Mrs. Casey's private use of EdCC facilities; and (3) [REDACTED] has cooperated in the Board's investigation of this matter.

D. RESOLUTION

1. [REDACTED] now recognizes in hindsight that the facts recited above constitute a violation of RCW 42.52. However, the Board and [REDACTED] stipulate that, to the extent [REDACTED] violated RCW 42.52, he did so unintentionally. [REDACTED] admits that he unintentionally violated provisions of chapter 42.52 RCW: (1) by allowing a private citizen to rent EdCC Department facilities at a reduced rate and by allowing a private citizen to rent EdCC

Department facilities unavailable to the general public, the effect of which secured a special privilege for Mrs. Casey for her private enterprise, a violation of RCW 42.52.070 and 160(1); and (2) by allowing a private citizen to use EdCC Department supplies at no cost, the effect of which allowed [REDACTED] to allow the use of EdCC's facilities under his official control for the private benefit of Mrs. Casey and a private, for-profit corporation, a violation of RCW 42.52.070 and 160(1).

2. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of three thousand dollars (\$3,000.00). The Board agrees to suspend one thousand dollars (\$1,000.00) on the condition that [REDACTED] 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 years from the date this Stipulation and Order is accepted by the Board.

3. The amount is payable to the state Executive Ethics Board within forty-five (45) 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 to become due and payable within ten (10) days of the missed payment.

4. [REDACTED] will continue to cooperate in the Board's investigation of this matter and will testify truthfully regarding the facts recited above at any subsequent Board proceedings regarding this matter.

5. [REDACTED] will attend Washington State sponsored ethics training within six (6) months of the date this Stipulation and Order is accepted by the Board. If no Washington State sponsored ethics training is offered within the relevant six months, then the parties hereto agree that the Board will notify [REDACTED] of an acceptable substitute training.

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) 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.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] [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 \$3,000.00 (\$1,000.00 suspended as noted above) 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 [REDACTED] and Edmonds 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 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 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]

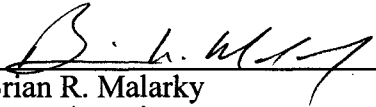
LeAnn McDonald, WSBA #16182
Attorney for Respondent

3/30/01

Date

Date

Stipulated to and presented by:



Brian R. Malarky
Executive Director

Marc D. Defreyn, WSBA #28318
Assistant Attorney General
Counsel for the Executive Director

April 2, 2001

Date

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

✓ 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 20 day of April, 2001.

James M. Yaché
James M. Yaché, Chair

Laquita Fields
Laquita Fields, Vice Chair

Sutapa Basu, Member

Cheryl L. Rohrer
Reverend Cheryl Rohrer, Member

Marilee Scarbrough
Marilee Scarbrough, Member

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

Respondent

Date

Attorney for Respondent

Date