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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

Withheld

Respondent.

NO. 08-100

STIPULATED FACTS,
CONCLUSIONS AND ORDER

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I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the Washington State Executive Ethics Board (Board) through Melanie de Leon, Executive Director. 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 the Board's proposed modification(s), if any, to the stipulation.

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Section 1: Procedural Facts

1.1 A complaint was received by the Board on February 7, 2008 that alleged that Withheld a Diesel Shop Instructor at Skagit Valley College (SVC), may have violated the Ethics in Public Service Act by using state resources for personal benefit, in violation of RCW 42.52.160, Use of persons, money, or property for private gain.

1.2 Board staff reviewed the complaint, Mr. Withheld response to the allegations, and supplemental information provided by the college.

1.3 On January 9, 2009, the Board reviewed staff's preliminary investigation report and found reasonable cause to believe Withheld may have violated one or more provisions of RCW 42.52, the Ethics in Public Service Act.

1.4 The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings

1 under the Administrative Procedures Act, including adjudicative hearings. The Board has
2 established such procedures under WAC 292-100-090.

3 1.5 Withheld understands that if Board Staff proves any or all of the alleged
4 violations at a hearing, the Board may impose sanctions, including a civil penalty under
5 RCW 42.52.480(1)(b) of up to \$5,000 for each violation found, or the greater of three times the
6 economic value of anything received or sought in violation of chapter 42.52 RCW. The Board
7 may also order the payment of costs, including reasonable investigative costs, under
8 RCW 42.52.480(1)(c).

9 1.6 Withheld recognizes that the evidence available to the Board Staff is
10 such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in
11 the interest of seeking an informal and expeditious resolution of this matter, the parties agree to
12 entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

13 1.7 Withheld waives the opportunity for a hearing, contingent upon
14 acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by
15 the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

16 The board has the option of accepting, rejecting, or modifying the
17 proposed stipulation or asking for additional facts to be presented. If
18 the board accepts the stipulation or modifies the stipulation with the
19 agreement of respondent, the board shall enter an order in conformity
20 with the terms of the stipulation. If the board rejects the stipulation or
21 respondent does not agree to the board's proposed modification to the
22 stipulation, the normal process will continue. The proposed stipulation
23 and information obtained during formal settlement discussion shall not
24 be admitted into evidence at a subsequent public hearing.

25 1.8 If the Board accepts this stipulation, the Board will release and discharge Withheld
26 Withheld from all further ethics proceedings under chapter 42.52 RCW for matters arising out
of the facts contained in the complaint in this matter, subject to payment of the full amount of
the civil penalty due and owing, any other costs imposed, and compliance with all other terms
and conditions of the agreed order. Withheld in turn agrees to release and discharge the

1 Board, its officers, agents and employees from all claims, damages, and causes of action
2 arising out of this complaint and this Stipulation and Agreed Order.

3 1.9 If this Stipulation is accepted, this Stipulation and Order does not purport to
4 settle any other claims between [Withheld] and the Washington State Executive Ethics
5 Board, the State of Washington, or other third party, which may be filed in the future.

6 1.10 If this Stipulation is accepted, this Stipulation and Order is enforceable under
7 RCW 34.05.578 and any other applicable statutes or rules.

8 1.11 If the Board rejects this Stipulation, or if [Withheld] does not accept the
9 Board's proposed modification(s), if any, Mr. [Withheld] waives any objection to participation
10 at any subsequent hearing by any Board member to whom this Stipulation was presented for
11 approval under WAC 292-100-090(2). Further, [Withheld] understands and agrees that if
12 this proposed Stipulation, with any applicable modification by the Board, is rejected by Mr.
13 [Withheld] this Stipulation and information obtained during any formal settlement discussions
14 held between the parties shall not be admitted into evidence at a subsequent public hearing,
15 unless otherwise agreed by the parties.

16 **Section 2: Findings of Fact**

17 2.1 At all times material hereto, [Withheld] was employed by Skagit Valley
18 College as a Diesel Shop Instructor.

19 2.2 In February 2005, [Withheld] acquired a 1966 Mustang. During the
20 summer of 2005, when classes were not in session, [Withheld] and a youth he was
21 mentoring performed restoration work on the car in the Skagit Valley College facility. The
22 work performed on the vehicle at the college diesel shop involved minor body work and
23 preparation of the vehicle for painting by a commercial shop. The Mustang was kept at the
24 college while the work was being performed.

1 2.3 While working on the Mustang using Skagit Valley College facilities, [Withheld]
2 [Withheld] enlisted the assistance of a young man, not a student or employee of the college,
3 whom Mr. [Withheld] was mentoring at the time, to assist with restoration work on the vehicle.

4 2.4 On January 9, 2009, the Executive Ethics Board found reasonable cause to
5 believe that [Withheld] committed a violation or violations of RCW 42.52.160.

6 **Section 3: Conclusions of Law**

7 3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
8 over [Withheld] and over the subject matter of this complaint.

9 3.2 Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
10 matter under the terms contained herein, subject to Board approval.

11 3.3 The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees
12 from using state resources for their benefit. RCW 42.52.160(1) states:

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

17 [Withheld] violated RCW 42.52.160(1), Use of persons, money or property for private
18 gain, when he used the facilities of Skagit Valley College to perform restoration work on his
19 private vehicle.

20 3.4 Based on Findings of Fact 2.1 through 2.3, [Withheld] used state
21 resources in violation of RCW 42.52.160.

22 3.5 The Board is authorized to impose sanctions for violations of the Ethics Act
23 pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for
24 imposing sanctions and consideration of any mitigating or aggravating factors.

1 **II. AGGRAVATING AND MITIGATING FACTORS**

2 In determining the appropriateness of the civil penalty, the criteria in
3 WAC 292-120-030 has been reviewed. It is an aggravating factor that **Withheld**
4 allowed an individual who was neither an employee of the college nor an enrolled student to
5 work with him, on college grounds, to complete some of the restoration work on the personal
6 vehicle. Mitigating factors include that **Withheld** used his own personal tools to work
7 on the vehicle; that he supplied, at his own cost, all the materials used in the restoration; and
8 that Mr. **Withheld** stated purpose for using college resources in mentoring the young man
9 was to encourage him to get off the streets, to teach him valuable skills, and possibly
10 encourage future enrollment in the diesel or automotive class on campus. Additionally, the
11 college did not have a formal policy prohibiting staff from working on their personal vehicles
12 on campus grounds. Mr. **Withheld** asserts that work on the Mustang was performed at the
13 college primarily because his personal tools were kept at the college for use by diesel shop
14 students to augment the tools provided by the college.

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16 **III. AGREED ORDER**

17 **Withheld** will pay a civil penalty in the amount of two thousand dollars
18 (\$2,000.00). Payment is due in full 45 days after this stipulation is accepted by the Board.

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20 **CERTIFICATION**

21 I, **Withheld** hereby certify that I have read this Stipulation and Agreed Order in
22 its entirety; that my counsel of record, if any, has fully explained the legal significance and
23 consequence of it; that I fully understand and agree to all of it; and that this Stipulation maybe

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1 presented to the Board without my appearance. I knowingly and voluntarily waive my right to
2 a hearing in this matter; and if the Board accepts this Stipulation and Agreed Order, I
3 understand that I will receive a signed copy.

4 Withheld



5 10-28-09

Date

6 Respondent

7 Stipulated to and presented by:

8 A handwritten signature in cursive script, appearing to read "Melanie De Leon".

9 MELANIE DE LEON

Date

10 Executive Director

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IV. 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

Respondent approves* the following modification(s):

Penalty of \$1000⁰⁰ / 500⁰⁰ suspended pending
no further violations for two years.

DATED this 13th day of November, 2009.

Neil Gorrell
Neil Gorrell, Chair

Linnaea Jablonski REB
Linnaea Jablonski, Vice-Chair

Michael F. Connelly
Michael F. Connelly, Member

Absent
Martin Biegelman, Member

Withheld * I accept do not accept (circle one) the proposed modification(s).

Withheld 11-30-09
ndent Date