

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-043

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

A. On July 14, 2014, the Executive Ethics Board received a complaint alleging that ██████████ Chief Administration & Human Resource Officer (CAO) with Community Colleges of Spokane (CCS) may have violated the Ethics in Public Service Act by hiring his son for a part-time hourly job within the HR Department of CCS. The two other individuals named in the complaint were Melody Matthews, Director, Human Resources Information Systems (HRIS), and Frances MacDonald-Davis, Executive Assistant to the Chief Administration & Human Resource Officer with CCS.

B. [REDACTED] is employed by CCS, is currently the Chief Administration & Human Resource Officer, and was so for all times pertinent to this investigation. CCS first hired Mr. Stevens in April of 2000 as the Vice President of Human Resources. In September of 2005, his position was renamed to Chief Human Resource Officer and in July 2012, the position was again renamed to Chief Administration Officer. The Chief Administration Officer position included the added responsibilities of facilities and security. For all times pertinent to this complaint Mr. Stevens was the also assigned ethics advisor for CCS.

C. The CCS Human Resources Department (HRD) was engaged in a project to convert all paper files to electronic files funded through October 2014. The project was in preparation of a large-scale conversion of the CCS administrations computing system in late August of 2014. The project consisted of disassembling, scanning, indexing, reassembling electronically, and storing approximately 2,900 personnel files.

D. One full time employee, Tim Fackenthal (Mr. Fackenthal), staffed the first phase of this project. The initial work on the project included the mapping of all document types, form and work flow, building an index glossary, and loading all the information into the new system. The first phase began in February of 2014. Originally, the plan was for permanent HR office clerical staff to assist Mr. Fackenthal with the project. Due to an unanticipated workload, the support staff was redirected to other critical functions of the HRD.

E. In April of 2014, the HRD management team, including Mr. Stevens, Frances MacDonald-Davis (Ms. MacDonald-Davis), and Melody Matthews (Ms. Matthews) met and determined the project was critically behind schedule. They decided that unless additional resources were assigned to the project it would not be completed before the funding ran out in

October 2014 and certainly not before the new administrative system was to come online in August 2014.

F. Based on the meeting, [REDACTED] directed his staff to hire part-time hourly staff with the basic technical and attention-to-detail skills needed to scan and index electronic files. Given the scope of the project, 1,050 hours of part-time staffing was approved and budgeted.

G. The part-time workers hired would have access to employee personnel files containing confidential personal information. Seeing no way around the risk of protecting the personal confidential information, [REDACTED] proposed hiring family members, namely, their children. [REDACTED] believed this would give HRD additional control over confidentiality as indicated in the written response, “essentially, HR Managers would have a means to “enforce” confidentiality even after these worker’s seasonal employment ended.”

H. CCS Chancellor Christine Johnson was informed of the plan to hire the children of [REDACTED] Ms. MacDonald-Davis, and Ms. Matthews and agreed to the hiring as long as the CCS nepotism policy was adhered to.

I. The CCS nepotism policy is in CCS Administrative Procedure 2.10.04, section 13. Section 13.2 states that family members shall not be placed into a conflict of interest situation by serving on a screening committees or recommending employment of family members. Section 13.3 states that family members shall not be assigned to the same department, if such family member would directly be supervised or be a supervisor of such employee, or where potential problems of safety, morale, security or conflicts of interest exist.

J. The part-time positions were not advertised internally or externally and no hiring process was conducted as provided for in WAC 357-19-377(2). This rule allows nonpermanent appointments to be filled on a noncompetitive basis.

K. To avoid a violation of the nepotism policy referenced above, no parent would be in the supervisory chain of his or her child, or, at a minimum, three supervisory levels removed. To accomplish this, Mr. Fackenthall was temporarily promoted into a supervisory position, from Office Assistant 3 to Office Support Supervisor, for the period of May 12 through October 3, 2014.

L. [REDACTED] indicated in his written response that following approval to hire from Chancellor Johnson, they told their children about the employment opportunity and that it was then up to the children to contact the hiring supervisor, Mr. Fackenthall.

M. Board staff contacted Mr. Fackenthall. Mr. Fackenthall advised board staff that he was the children's supervisor. Mr. Fackenthall further advised board staff that he was not involved in the hiring process and did not know how the children were selected to be hired.

N. As the Office Support Supervisor, Mr. Fackenthall reported directly to Ms. MacDonald-Davis. On September 22, 2014, Mr. Fackenthall was appointed into a new position of Human Resource Consultant (HRC) 1. At that time he was appointed, the project had not been completed and Austin Davis, the son of Ms. MacDonald-Davis, was still working in the part-time position. As a HRC 1, Mr. Fackenthall reported directly to Gary Nilsson (Mr. Nilsson), Director of the Human Resource Department (HRD) at CCS instead of Ms. MacDonald-Davis. Austin Davis completed the project on October 9, 2014.

O. Mr. Nilsson indicated in a written response to Board staff that the decision to hire the three sons was discussed at an HRD meeting but only as to where each would be working, their expected work tasks and who they would be reporting to. Mr. Nilsson indicated that he did not have any input into the hiring. Mr. Nilsson further indicated in a written response that he never thought the decision to hire the sons was improper as long as they would not be directed or supervised by their parents.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

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.

2. Based on the stipulated facts above, [REDACTED] conducted activities incompatible with his public duty in regard to his participation of the hiring of his son in violation of RCW42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. 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.

4. Based on the stipulated facts above, [REDACTED] used his position as Chief Administration and Human Resource officer for CCS to secure a special privilege for his son in violation of RCW 42.52.070.

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

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, aggravating factors are that [REDACTED] was in an executive management position at CCS and that he was the agency's ethics advisor. These types of violations significantly reduce the public respect and confidence in state government employees.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. 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.

4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, 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. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500). The Board agrees to suspend one thousand, two hundred and fifty dollars (\$1,250.00) on the condition that [REDACTED] complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The non-suspended civil penalty in the amount of one thousand two hundred and fifty dollars (\$1,250.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED] hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

[REDACTED]

6.11.15
Date

Respondent

Presented by:

L. Reynolds
KATE REYNOLDS
Executive Director

6/12/15
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

Respondent approves* the following modification(s):

DATED this 17th day of July 2015

Anna Dudek Ross
Anna Dudek Ross, Chair

Samantha Simmons
Samantha Simmons, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

Sumeer Singla
Sumeer Singla, Member

* I, [REDACTED], accept/do not accept (circle one) the proposed modification(s).

[REDACTED], Respondent Date