

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

LOREN McNAIR,

Respondent.

NO. 01-80

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between LOREN McNAIR, Respondent, 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.

II. FACTS

1. Loren McNair is a Diesel Instructor at Lower Columbia College (LCC) and served in that capacity at all times material to the allegations herein.
2. In a report dated May 18, 2001, the State Auditor, in conjunction with the LCC, investigated allegations that Mr. McNair was using student labor and college-furnished parts to rebuild motor vehicle parts for personal benefit and the benefit of others. The investigation report found that:
 - Mr. McNair, as a diesel instructor, used student labor and college-furnished parts to rebuild motor parts for personal benefit and the benefit of others.
 - Mr. McNair used LCC facilities and students to repair his own personal diesel engines.
 - Mr. McNair had previously been advised to remove the engines from the college premises.

- Students were rebuilding two starters belonging to the College Foundation for use in Mr. McNair's private boat.
 - Mr. McNair disregarded College pricing and purchasing guidelines. This cost the college an undetermined amount of money.
 - After the whistleblower assertion was filed, Mr. McNair ordered students to tear down the engines in question, in direct violation of an order from the Vice President of Administrative Services.
 - Mr. McNair directed students to work on a donated vehicle. No work order could be found for this job. The donor of the vehicle stated the vehicle was to have been donated to the Boy Scouts. The Boy Scout Council had no record of the donation and Mr. McNair had the title to the vehicle. Required fees were not paid for work performed on the vehicle in the College Auto Shop.
3. On January 29, 2002, LCC and Mr. McNair entered into an agreement providing that:
- a. Some of Mr. McNair's actions may have been in violation of RCW 42.52.160.
 - b. Mr. McNair agrees to pay the college restitution in the amount of \$750.00.
 - c. Mr. McNair is prohibited from bringing and/or housing any personal engines, vehicles, boats and equipment into and/or in the vocational center; from utilizing any college facility or equipment to store, house, transport, or perform work on any personal engines, vehicles, boats and equipment without the express permission of the Vice President and Dean of Faculty or the Dean for Business and Technology for a period of two years. This provision also applies to personal property belonging to another person or entity, but in the custody or possession of Mr. McNair.
 - d. Mr. McNair shall not have the authority to accept any property to be given or donated to LCC and the Lower Columbia College Foundation.
 - e. The college administration agrees that as policy is written and/or changes, that all faculty will be advised, in writing, at the earliest possible date.

- f. The college administration further agrees to put in writing policies to address personal items within instructional programs.
4. This agreement has been placed in Mr. McNair's personnel file for a period of two years and represents the initial step in personnel corrective action.
5. Mr. McNair has paid the \$750 as stipulated in his Agreement dated January 29, 2001.

III. APPLICABLE LAW

1. RCW 42.52.160(1) states:

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.

IV. 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 violations were continuing in nature (WAC 292-120-030(2)(a)); (2) the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)), and (3) the violations involved personal gain to Mr. McNair. WAC 292-120-030(2)(f).
2. It is a mitigating factor the Mr. McNair entered into an agreement with LLC as outlined above in Facts, paragraph 9, a-d, and was required to pay restitution to LLC in the amount of \$750.00. This agreement will remain in Mr. McNair's personnel file for two years representing the initial step in personnel corrective action. Mr. McNair has paid the \$750.00 in restitution as stipulated in the Agreement.

V. RESOLUTION

1. Mr. McNair admits that he violated provisions of chapter 42.52 RCW by using state facilities for personal gain, a violation of RCW 42.52.160.
2. Recognizing that he is personally responsible for his conduct, Mr. McNair will pay a civil penalty in the amount of seven hundred fifty dollars (\$750.00). The Board agrees to suspend

two hundred fifty dollars (\$250.00) on the condition that Mr. McNair 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.

3. The total amount of the civil penalty is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board.

VI. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Loren McNair 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) that 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.

VII. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Loren McNair 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. Loren McNair 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 Loren McNair and Lower Columbia 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 will be inadmissible for any purpose in any other proceeding involving Loren McNair, the state, and/or third parties aligned with the state.
4. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

VIII. CERTIFICATION

I, Loren McNair, hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.

Loren McNair 4-30-03
Loren McNair, Respondent Date

Thomas K. Doyle
Thomas K. Doyle Date
Attorney for Respondent

Stipulated to and presented by:

Brian R. Malarky Apr 30, 2003
Brian R. Malarky, Executive Director Date

