BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: CARL WOODS, Respondent.	No. 02-054 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Carl Woods, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, 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.

Section 1: PROCEDURAL FACTS

1.1. On June 17, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Carl Woods, an employee of the State of Washington, University of Washington (UW), used state resources for personal gain when he conducted an outside business in conflict with the proper discharge of his official duties and used state employees under his direction to work for his outside business. A complaint from a private party relating the same allegations was received on March 6, 2002. The Executive Ethics Board reviewed this referral and issued a complaint in February 2003.

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

1.3. Carl Woods understands that if 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 $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).

1.4. Carl Woods recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Woods 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 set forth below.

1.5. Carl Woods 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 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Carl Woods 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. Mr. Woods 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 agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Carl Woods and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.9. If the Board rejects this stipulation, or if Carl Woods does not accept the Board's proposed modification(s), if any, Mr. Woods waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Woods understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties 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 State of Washington, UW employed Carl Woods as a Lead Painter. Mr. Woods has been a full time UW painter since 1996; and has been the Lead Painter since approximately 1999. His job duties include estimating jobs, preparing bids, ordering material, requisitions and handling customer questions and complaints. He oversees three painters and is responsible for scheduling, monitoring and inspecting their work.

2.2. Carl Woods has owned his own outside painting company since 1990. Carl Woods has used a UW painter under his lead for his outside business from 2000 to 2001.

2.3. Carl Woods asserts that he has never used any UW equipment or resources other than UW painters for his outside painting business. He states he has never used UW painters during any time they were being paid by the UW, nor has he ever worked for his personal business at any time he was being paid by the UW.

2.4. Carl Woods asserts that prior to July 2001, he was unaware of any potential ethics violation in his employing UW painters to work on their own time for his outside painting business. In approximately September 2001 his supervisor advised him that he should not have any employees that he supervised work for his outside painting business.

2.5. Carl Woods attended ethics training in January 2000.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Carl Woods 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.

3.3. The Ethics in Public Service Act prohibits a state employee from employing or using any person under the employee's official control or direction for private benefit or gain. RCW 42.52.160(1) states:

> No state officer of 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 benefit or gain of the officer, employee, or another.

3.4. The Ethics Act further prohibits a state employee from engaging in a business or professional activity that is in conflict with the proper discharge of the employee's official duties. 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.

3.5. Based on Findings of Fact 2.1 through 2.4, Carl Woods used state resources in violation of RCW 42.52.160(1) and RCW 42.52.020 when he employed University painters under his supervision in his outside painting business.

3.6. 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. It is a mitigating factor that Mr. Woods discontinued using the painters under his direction when he was informed that it was a violation of the Ethics Act (WAC 292-120-030(4)(e)).

Section 4: AGREED ORDER

4.1. Carl Woods will pay a civil penalty in the amount of five hundred dollars ($500.00) of which one hundred twenty five dollars ($125.00) is investigative costs. The Board agrees to suspend two hundred fifty dollars ($250.00) of the civil penalty on the condition that Carl Woods complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW.

4.2. The civil penalty and investigative costs due in the amount of two hundred fifty dollars ($250.00) is payable to the *State of Washington*, which will be remitted to the Executive Ethics Board in five (5) equal installments of fifty dollars ($50.00) with the first payment due on May 31, 2004, and successive payments due on the last day of each month until the last payment which is due on September 30, 2004. 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.

CERTIFICATION

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

Carl Woods 4/2/04

Carl Woods, Respondent Date
Respondent

Stipulated to and presented by:

Apr 2/04

Brian R. Malarky, Executive Director 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

X 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 9th day of ~~April~~ July, 2004.

Marilee Scarbrough ,(Chair)

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Jenson, Member

* I, Carl Woods, accept/do not accept (circle one) the proposed modification(s).

_____

Carl Woods, Respondent Date