BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: CAREY LEWIS, Respondent.	No. 02-036 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Carey Lewis, 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 March 25, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Carey Lewis, an employee of the State of Washington, Department of Social and Health Services (DSHS), may have released unauthorized confidential DSHS client information to a private investigative agency owned by his brother. Carey Lewis allegedly worked for his brother's investigative agency. The Executive Ethics Board reviewed this referral and issued a complaint on September 13, 2002.

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. Carey Lewis 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. Carey Lewis recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Lewis 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. Carey Lewis 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 Carey Lewis 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. Lewis 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 Carey Lewis 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 Carey Lewis does not accept the Board's proposed modification(s), if any, Mr. Lewis 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. Lewis 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, DSHS, employed Carey Lewis as a Social and Health Program Manager 2 with the Division of Child Care and Early Learning. In this capacity, Carey Lewis is responsible for assessing child care facilities for licensability, inspecting and monitoring such facilities and investigating allegations of abuse/neglect or license violations in Pierce and Kitsap counties. As part of these duties, Mr. Lewis has access to CPS records to evaluate applicants and to work jointly with CPS in complaint investigations. Carey Lewis has been a state employee for approximately 24 years.

2.2. Edward Lewis is Carey Lewis' brother and owns his own investigation business, LPI Services. Edward Lewis investigates a variety of matters including divorce and child custody cases, some of which may have CPS or DSHS involvement. Edward Lewis is also a former CPS employee.

2.3. Carey Lewis obtained a private investigator license in June 1999 and assists his brother, Edward Lewis, in his investigation business. Carey Lewis asserts that any work that he performed consisted of surveillance work on select cases that Mr. Lewis did not have a conflict with his DSHS duties. Carey Lewis further asserts that he did not receive any compensation for these services.

2.4. Carey Lewis did not submit a Request for Approval of Outside Employment in order to obtain DSHS approval of his outside employment as a private investigator. DSHS policy requires approval of any outside employment.

2.5. Employees holding outside employment are required to conform with DSHS Personnel Policy 531, which states in relevant part:

> ... An employee must ensure outside employment does not conflict with the performance of the employee's assigned duties; or is consistent with provision of Chapter 42.52 RCW which establishes a code of ethics for public officers and employees...The employee wishing to accept outside employment may do so. However, the employee must immediately request approval from the approving authority through the chain of command...

2.6. Carey Lewis' private investigator license expired on June 28, 2003. Mr. Lewis asserts that he will not renew his license while employed by the State of Washington.

2.7. A December 8, 2000 letter from Edward Lewis to an investigation client of his stated that he had leads regarding DSHS records from a confidential informant and requesting additional funds from his client to proceed further with the investigation.

2.8. Edward Lewis has refused to reveal his source of the confidential information and Carey Lewis denies he provided his brother the confidential CPS client information.

2.9. As a result of a Washington State Patrol investigation of these circumstances, DSHS reduced Carey Lewis' monthly salary from $4,115.00 to $3,637.00, effective September 1, 2002 through March 31, 2003. This reduction in pay amounts to a loss of $3,346.00

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Carey Lewis 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. State employees may not accept employment that may cause them to make unauthorized disclosure of confidential information. State employees are also prohibited from making disclosure of confidential information gained by reason of the employee's official position or use the information for his or her personal gain. RCW 42.52.050 states:

> (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.
>
> (2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.
>
> (3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

3.4. Pursuant to RCW 42.52.120, unless specific conditions are met, no state officer or state employee may receive anything of economic value under any contract or grant outside of his or her official duties. RCW 42.52.120(f) requires the contract or grant would not require unauthorized disclosure of confidential information.

3.5. Based on Findings of Fact 2.1 through 2.8, the Board concludes that Carey Lewis violated RCW 42.52.120 and agency policy when he accepted employment as a private investigator and did not obtain DSHS approval of this employment. The Board further

concludes that Mr. Lewis RCW 42.52.050(1) because his unauthorized employment as a private investigator and assistance to his brother's investigative firm, might reasonably have required or induced him to make unauthorized disclosure(s) of confidential information acquired by reason of his official position.

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 an aggravating factor that the conduct significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)). It is a mitigating factor that DSHS reduced Carey Lewis' salary for seven months (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. Carey Lewis will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Carey Lewis will also pay a civil penalty in the amount of five thousand dollars ($5,000.00). The Board agrees to suspend three thousand five hundred dollars ($3,500.00) of the civil penalty on the condition that Carey Lewis 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 due in the amount of one thousand five hundred dollars ($1,500.00) is payable to the *State of Washington,* which will be remitted to the Executive Ethics Board in ~~fifteen (15)~~ fifty (50) equal installments of one hundred dollars ($100.00) with the first payment due on April 30, 2004, and successive payments due on the last day of each month until the last payment ~~which is due on June 30, 2005.~~ is made. 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, Carey Lewis, 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.

Carey Lewis 3/09/04

Carey Lewis, Respondent Date

Stipulated to and presented by:

2 March 04

Brian R. Malarky Date
Executive Director

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;

X MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

no suspension of any part of the monetary penalty

DATED this 9th day of April, 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yenson, Member

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

Carey Lewis, Respondent 4/14/04 Date