

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

William "Wayne" Caldwell
Respondent.

No. 2013-005

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, WAYNE CALDWELL, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 February 26, 2013, the Executive Ethics Board (Board) initiated a complaint alleging that Wayne Caldwell may have violated the Ethics in Public Service Act by: conducting activities that were incompatible with his public duty while the Executive Dean of Instruction, providing his spouse a special privilege during the administration of the FCA courses offered in partnership with Pierce College and moving FCA technical classes that should have been taught by BTC to Pierce. The Board found Reasonable Cause on September 13, 2013.

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. Wayne Caldwell 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. Wayne Caldwell recognizes that the evidence available to the Board staff 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 set forth below.

1.5. Wayne Caldwell 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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 Wayne Caldwell 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. Wayne Caldwell 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 Wayne Caldwell 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 Wayne Caldwell does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Wayne Caldwell waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Wayne Caldwell 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. Bates hired Mr. Caldwell in February of 2006 as the Dean of the Fire Service Training. In January of 2011, Mr. Caldwell was tasked with the management of not only the Fire Service Programs at Bates, but also their Diesel and Heavy Equipment and Biotechnology Programs. On July 1, 2011, he was promoted to Executive Dean of Instruction for Bates' South Campus in addition to supervising and managing 13 training programs, including the Fire Services.

2.2. As the Dean of Fire Services Mr. Caldwell, was responsible for hiring instructors to instruct Fire Services and FCA courses. Mr. Caldwell had recommended to Bates to hire his wife to teach FCA courses at Bates. Because Mr. Caldwell was the Dean of all Fire Services, Bates Administration appointed Kris Manning, Executive Dean of the South Campus to be Mrs. Caldwell's supervisor. Mrs. Caldwell taught three (3) FCA courses for Bates from June 2008 to April 2009.

2.3. Mr. Manning was Mrs. Caldwell's supervisor in name only, he approved her time for payment, but Mr. Caldwell managed all aspects of the program. Mrs. Caldwell instructed FCA courses at Bates while working for Pierce College as the FCA Program Coordinator. Bates paid her for these courses. The FCA program was Wayne's program and Mr. Manning did not get involved with that program unless Mr. Caldwell needed him to do so, which was very seldom.

2.4. In early Fall 2008, Ms. Loiland, New VP Of instruction for Bates, discovered that Bates had hired Mrs. Caldwell as an adjunct faculty member to teach courses in the FCA program.

2.5. Mrs. Caldwell had been hired at Bates with the former VP of Instruction's approval. Because of this prior approval, Ms. Loiland did not take disciplinary action against Mr. Caldwell. She allowed both Mr. and Mrs. Caldwell to teach their fall classes but made it very clear to everyone, including the Pierce Administration, that it would not continue after the fall quarter and that Mr. Caldwell would have to hire a different adjunct faculty member for the FCA program.

2.6. In February 2009, Mr. Caldwell filed an application at Pierce to become a Distance Learning Instructor for the FCA program and was hired by Pierce on March 10, 2009 as a Distance Learning instructor for the FCA program.

2.7. The first FCA course taught at Pierce by Mr. Caldwell after Ms. Loiland instructed him that he could not was in the winter quarter of 2010. The class was entitled "Negotiations", it was a three-credit class and he was paid \$2,077.20 by Pierce College. His wife, Pam Caldwell, was the person at Pierce College who hired him.

2.8. Starting in January of 2010, Pam and Wayne Caldwell began moving FCA courses that should have been taught at Bates to Pierce. By the end of 2012, Pierce was teaching the entire FCA technical course and Wayne and Pam Caldwell were instructing all of the classes.

2.9. In the Spring of 2011, Pierce decided to place the FCA program in a self-support model. This meant that the program had to pay for itself through money collected through tuition. This also meant that the state would stop providing FTE money back to the colleges.

2.10. As a result, Pierce paid for instructional cost that should have been borne by Bates and Bates lost all financial gain by not having Bates instructors teach the courses. The students were also adversely impacted by not having a diverse group of experienced instructors.

2.11. In late 2012, some of the students in the FCA program began to complain to the Pierce administration about the poor instruction and the lack of a more diverse instructor group. Because of these student complaints, the Pierce administration discovered that Wayne and Pam Caldwell were the only two instructors.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mr. Caldwell 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, 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.

3.4. Based on Findings of Fact 2.1 through 2.11, Wayne Caldwell conducted activities incompatible with his public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having a financial interests in a transaction. RCW 42.52.030 states in part:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

3.6. Based on Findings of Fact 2.1 through 2.11, Wayne Caldwell had a financial interest instructing the FCA Course for Pierce in violation of RCW42.52.030.

3.7. 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.

3.8. Based on Findings of Fact 2.1 through 2.11, Wayne Caldwell secured special privilege for his wife in violation of RCW42.52.070

3.9. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. Aggravating factors are: Mr. Caldwell was in a management position within Bates Technical College; these types of violations significantly reduce the public respect and confidence in state government employees; his supervisor advised Mr. Caldwell that he could not instruct in the Pierce FCA Program; and Mr. Caldwell benefitted financially because of these violations. Mitigating factors are the hiring of Mrs. Caldwell by Mr. Caldwell; the hiring of Mrs. Caldwell was initially approved and supported by Mr. Caldwell's supervisor at the time, the former Vice President of Instruction at Bates; and Mr. Caldwell was asked to resign from state service.

Section 5: AGREED ORDER

5.1 For violating RCW 42.52, Wayne Caldwell will pay a civil penalty in the amount of, one-thousand, seven hundred and fifty dollars (\$1,750.00).

5.2 The civil penalty of \$1,750 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

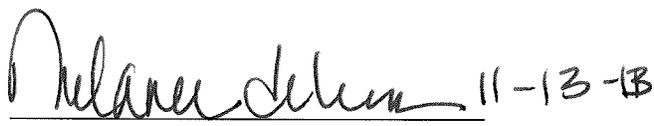
II. CERTIFICATION

I, Wayne Caldwell, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy.


Wayne Caldwell Date
Respondent

*I have read and understood this document but I **do not agree with all the findings presented.** Due to my current circumstances, I want to put this matter behind me and agree to the settlement amount with an agreed payment plan.* 

Stipulated to and presented by:


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

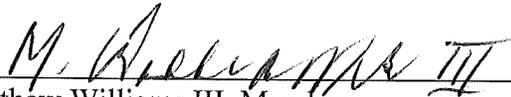
DATED this 10th day of January 2014



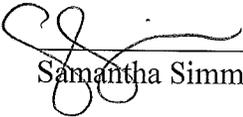
Lisa Marsh, Chair



Anna Dudek Ross, Vice-Chair



Matthew Williams III, Member



Samantha Simmons, Member

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

Wayne Caldwell, Respondent Date