BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:	NO. No. 99-14
JOHN CASEY	STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between John Casey through his attorney, Steven N. Ross, and the EXECUTIVE ETHICS BOARD ("Board") through Marc D. Defreyn, Assistant Attorney General. 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.

A. FACTS

1. Mr. John Casey is a Culinary Arts Instructor and Manager of the Fine Dining Room at Edmonds Community College (EdCC). As Manager of the Fine Dining Room, Mr. Casey's duties include scheduling dining room use and overall monitoring and overseeing of the Fine Dining Room.

2. Mrs. Kathy Casey is the spouse of Mr. John Casey. Mrs. Casey owns a private, for-profit menu-developing/restaurant-enhancement business. Mr. John Casey has a financial interest in the business owned and operated by Mrs. Kathy Casey.

3. Mr. Bronowitz has been Chair/Program head of the Culinary Arts Department ("Department") of the Edmonds Community College for the last 11 years and oversees almost all aspects of the program with supervision from EdCC Administration. In May 1998, Mr. Bronowitz suffered a stroke and was unable to work until the fall of the same year.

4. While employed as Chair/Program head of the Department, Mr. Bronowitz gave a private citizen, Mrs. Kathy Casey, wife of Mr. John Casey, access to Department facilities. Ms.

Casey was and continues to be a member of the Culinary Arts Department's Advisory Board. Mrs. Casey rented the facilities for the use of her private, for-profit business, a menu-developing/restaurant enhancement consultancy. Between 1995 – 1998, Mrs. Casey was allowed to rent Department facilities at the rate of $50.00 per day, including the Department's Fine Dining Room. Mrs. Casey was also allowed to rent a portion of the Department's walk-in refrigerator and freezer for $100.00 per month. The funds Mrs. Casey paid were deposited in a Department account. In addition, Mr. Bronowitz allowed Mrs. Casey to use the Department's bulk supplies (such as flour and sugar) for her private business. Mr. Bronowitz allowed Mrs. Casey to replace these items on the honor system. No records were kept of these transactions.

5. Mr. Casey became the Acting Chair of the Culinary Arts Department (Department) at EdCC when Mr. Walter Bronowitz, Chair of the Department, suffered a stroke in May 1998 and was unable to work until the fall of the same year. The Chair and Acting-Chair of the Department oversees almost all aspects of the program with little oversight from EdCC Administration.

6. While Manager of the Fine Dining Room, Mr. Casey personally scheduled Mrs. Casey's use of the kitchen and Fine Dining Room. A 1996 EdCC memorandum details procedures for scheduling the use of an EdCC facility, including the Fine Dining Room, and requires the completion of a scheduling form. Both Mr. Casey and Mr. Bronowitz were authorized to approve the Fine Dining Room scheduling. Mr. Casey did not follow the proper procedures when scheduling Mrs. Casey's use of the Fine Dining Room or other Department facilities.

7. In 1995, Mr. Casey faxed a Department invoice, using Department facilities, to Holland America, a private corporation, in the amount of $650. The invoice reflected Mrs. Casey's use of the Department kitchen in connection with services provided by Mrs. Casey to Holland America. The invoice amount included $200.00 for four days of kitchen rental and $450 for kitchen storage. The amount was paid into a Department account.

8. WAC 132Y-136-201, promulgated in 1982, states that college property available for scheduling (renting) "shall be limited to" classrooms, laboratories, conference rooms, gymnasiums, dining halls, student lounges, libraries, playing fields, and unassigned office space. While allowing rental of the Department's Fine Dining Room, the rule does not allow for rental of the Department's kitchen, refrigerator, or freezer.

9. An extensive EdCC fee structure policy issued in 1994 established rental rates for various facilities, including a rate of $175 - $230 for use of the Department's Fine Dining Room, by private, for-profit users. Mrs. Casey did not pay the established rate for the Fine Dining Room.

10. In addition to the violations noted above, as Acting-Chair of the Department, Mr. Casey continued to allow the violations commenced under the tenure of Mr. Bronowitz. These included allowing Mrs. Casey to continue to have unlimited access to Department facilities, allowing Mrs. Casey to continue to rent Department facilities at the rate of $50.00 per day, including the Department's Fine Dining Room, and allowing Mrs. Casey to continue to rent a portion of the Department's walk-in refrigerator and freezer for $100.00 per month.

11. In August/September 1998, EdCC Administration learned that the facts recited above could be construed as an ethics violation. Prior to the State Auditor's findings, EdCC Administration had been aware that Mrs. Casey was using EdCC facilities, but did not believe there was any procedural or ethical problem connected with the rental. The Administration permitted continued rental of the facilities to Mrs. Casey during the beginning of the State Auditor's investigation.

12. Mrs. Casey had provided support to the Culinary Arts Department for over ten years, through her fundraising efforts and by serving on the Department's advisory board. At the time the rentals were made, the Administration believed that the Culinary Arts Department would benefit from having Mrs. Casey working on the campus, thereby bringing further visibility and recognition to the Department. Administration officials assumed, incorrectly, that proper procedures were being followed in making the rentals to Mrs. Casey. Similarly, Mr. Casey

assumed that proper procedures were being followed, and asserts that he acted in good faith in making the rentals. However, he now recognizes that the procedures that he followed for rental of the facilities were not proper procedures.

13. From the time EdCC was notified of the violation in August/September 1998 until present, John Casey has not received, nor been subjected to, any departmental discipline or other sanctions related to this matter.

B. APPLICABLE LAW

1. RCW 42.52.020 states:

> No state officer or 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 duties.

2. RCW 42.52.030(1) states:

> No state officer or state employee, except as provided in subsections (2) and (3) 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. 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. RCW 42.52.160(1) states:

> (1) 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.

C. 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: (1) the violation was continuing in nature (WAC 292-120-030(2)(a)); (2) the violation impaired a function of EdCC (WAC 292-120-030(2)(d)); (3) the violation significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)); and, the violation involved personal gain to Mr. Casey (WAC 292-120-030(2)(f)).

2. In addition, it is an aggravating factor that: (1) Mr. Casey has significant supervisory responsibility (WAC 292-120-030(3)(d)); and, (3) Mr. Casey has incurred no other sanctions as a result of the violations (WAC 292-120-030(3)(f)).

3. It is a mitigating factor that: (1) Mr. Casey's conduct resulted in unintentional violations of the Ethics in Public Service Act; (2) Mrs. Casey's rental of EdCC facilities was approved by Department Chair Walter Bronowitz; and (3) EdCC was partially reimbursed by Mrs. Casey for her private use of EdCC facilities.

D. RESOLUTION

1. Mr. Casey and the Board wish to resolve this matter in a constructive way and in a manner that benefits EdCC, its students, and its employees.

2. Mr. Casey now recognizes in hindsight that the facts recited above constitute a violation of EdCC's rules and policies, including WAC 132Y-136-201. To the extent that Mr. Casey violated chapter 42.52 RCW by violating EdCC rules and policies, he did so unintentionally. Mr. Casey admits that he unintentionally violated provisions of chapter 42.52 RCW: (1) by improperly scheduling EdCC facilities for his spouse's business, in which he had a financial interest; a violation of RCW 42.52.020, RCW 42.52.030(1), RCW 42.52.070, and RCW 42.52.160(1); (2) by sending an invoice to a private corporation on a Department invoice for services actually provided to the corporation by his spouse's for-profit business; a violation of RCW 42.52.020, RCW 42.52.030(1), RCW 42.52.070 and RCW 42.52.160(1); (3) by continuing to allow his spouse to rent EdCC Department facilities at a reduced rate; a violation

of RCW 42.52.020, RCW 42.52.030(1), RCW 42.52.070 and RCW 42.52.160(1); and (4) by continuing to allow his spouse to rent EdCC Department facilities unavailable to the general public, a violation of RCW 42.52.020, RCW 42.52.030(1), RCW 42.52.070 and RCW 42.52.160(1).

3. Mr. Casey will pay a civil penalty in the amount of four thousand dollars ($4,000.00). The Board agrees to suspend one thousand five hundred dollars ($1,500.00) on the condition that Mr. Casey complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of four (4) years from the date this Stipulation and Order is accepted by the Board.

4. The civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board. 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.

5. Mr. Casey will make a charitable contribution of four thousand dollars ($4,000.00) to a scholarship fund for culinary arts students at EdCC. The EdCC President or his or her designee shall administer the scholarship funds, provided the designee is not assigned to the Culinary Arts Program of EdCC. This contribution will satisfy the requirements for restitution.

6. The restitution is payable to *Edmonds Community College* within forty-five (45) days of approval of this Stipulation and Order by the Board. 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 restitution payment.

7. The Board agrees not to seek separate restitution, as provided for in RCW 42.52.480(1)(c), for investigative costs associated with this matter.

~~8. The Board agrees to issue an advisory opinion outlining proper procedures to avoid conflicts of interest when state employees conduct state business involving family members.~~

9. John Casey will be required to ~~review the Board's forthcoming advisory opinion (as noted above) and~~ attend Washington State sponsored ethics training within six (6) months of the date this Stipulation and Order is accepted by the Board.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over John Casey 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) which 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.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges John Casey 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 owed in the amount of $4,000.00 ($1,500.00 suspended as noted above), restitution in the amount of $4,000 <u>as noted in paragraph D (5)</u> above, and compliance with all other conditions of this Stipulation. John Casey 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 John Casey and Edmonds 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 is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

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G. CERTIFICATION

I, John Casey, hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

John Casey

JUNE 19, 2001

Date

Steven N. Ross, WSBA #10929
Attorney for Respondent

June 19, 2001

Date

Stipulated to and presented by:

Brian R. Malarky
Executive Director

8 June 2001

Date

Marc D. Defreyn, WSBA #28318
Assistant Attorney General
Counsel for the Executive Director

6-11-01

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;

__X__ *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by John Casey.

① Paragraph D(8) is deleted.

② Reference to paragraph D(8) in paragraph D(9) is deleted.

③ Reference to paragraph D(5) added to paragraph F(1).

DATED this 8th day of June, 2001.

James M. Vaché, Chair

Laquita Fields, Vice Chair

Sutapa Basu, Member

Marilee Scarbrough, Member

Rev. Cheryl Rohret, Member

I, John Casey, (accept)/do not accept (circle one) the proposed modification.

Respondent — Date: 6-26-01

Attorney for Respondent — Date: 6-24-01