

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Jennings
Respondent.

No. 2021-045

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, David Jennings and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through KATE REYNOLDS, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On September 29, 2021, the Executive Ethics Board (Board) received a referral from the Department of Corrections (DOC) alleging that David Jennings (Mr. Jennings), Correctional Industries Supervisor with DOC, may have violated the Ethics in Public Service Act. The DOC referral alleges that Mr. Jennings used his position as a Correctional Industries Supervisor to access the Offender Management Network Information (OMNI) database to obtain information regarding an ex-offender and then shared that information to an outside party. In addition, the referral alleges that Mr. Jennings used his DOC desk phone to make personal phone calls in violation of the ethics act.

2. Mr. Jennings has worked for DOC for twenty-three plus years starting at the Cedar Creek Corrections Center as a Correctional Officer in 1997. In November of 1999, he transferred to Stafford Creek Corrections Center (SCCC) as a Correctional Officer. In March of 2001, he was promoted into his current position as a Correctional Industries Supervisor.

3. On September 1, 2020, Michael Gleason (Mr. Gleason), DOC Investigator assigned to the Intelligence and Investigations Unit at the Stafford Creek Correction Center (SCCC) located in Aberdeen, Washington, received a phone call from an ex-incarcerated individual Robert Mullis (Mr. Mullis). Mr. Gleason sent an email to the SCCC Superintendent, Ronald Hayes (Mr. Hayes) to notify him of the phone call and the seriousness of the information if proven to be true.

4. Mr. Gleason indicated in his report of the phone call to Mr. Hayes that Mr. Mullis told him that he was an ex-incarcerated person that was convicted of a sex offense many years ago and has been off DOC supervision for many years.

5. Mr. Gleason indicated in his report that Mr. Mullis told him that in the last two or three weeks he met Kelly Painter (Ms. Painter) from the Raymond area and began a dating relationship with her.

6. Mr. Gleason indicated that he was told by Mr. Mullis that he was up front with Ms. Painter about his previous criminal history and that recently Ms. Painter told him that she had a previous relationship with a current SCCC employee, Mr. Jennings, and that Mr. Jennings worked for Correctional Industries (CI) in the laundry area.

7. Mr. Gleason indicated in his report of the call that Mr. Mullis told him that Ms. Painter was still in contact with Mr. Jennings and that Ms. Painter believed Mr. Jennings had researched Mr. Mullis' prison records and other personal information, to include Mr. Mullis'

prison photo, crime, case history chronological event entries and then disclosed them to Ms. Painter.

8. DOC IT revealed that Mr. Jennings accessed Mr. Mullis' OMNI records including offender case plan and photo on August 24 and again on August 27, 2020.

9. Mr. Jennings admitted to DOC investigators that he accessed the OMNI Database to see if Mr. Mullis was on active supervision, including looking at his photo, crime, case history and chronological event entries after he had learned from friends that Mr. Mullis had friended his live-in girlfriend (Ms. Painter).

10. Mr. Jennings told DOC investigators that he disclosed confidential information about Mr. Mullis to Ms. Painter during the last week of August 2020.

11. The DOC investigation also revealed evidence that Mr. Jennings may have violated the ethics act by using his DOC desk phone to make personal phone calls.

12. The DOC investigation reviewed phone calls made from Mr. Jennings' desk phone for the period of July 1 through September 1, 2020. See examples of that review below:

Name	Total calls	Total time(minutes)
Kelly Painter	26	194.3
Sally Thiessen	45	74.7
Little Creek Casino	3	10.6
J&J Auto	10	29.7
Metal Mill	9	21

13. Mr. Jennings told DOC investigators that he used his desk phone to call his girlfriend, Ms. Painter, and that he called the Little Creek Casino once or twice. During a follow up interview with the DOC investigator Mr. Jennings indicated that he didn't know why he would have called Ms. Thiessen 45 times.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from disclosing confidential information. RCW 42.52.050 – Confidential Information – Improperly concealed records 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.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

2. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, states, in part:

.....

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees and they were continuous in nature. In the matter at hand, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Jennings and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. David Jennings agrees that if any or all of the alleged violations were proven 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).

5. David Jennings further agrees that the evidence available to the Board is such that the Board may conclude they 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.

6. David Jennings waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. David Jennings 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between David Jennings and the Washington State Executive Ethics Board, the State of

Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against David Jennings at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if David Jennings does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, David Jennings understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

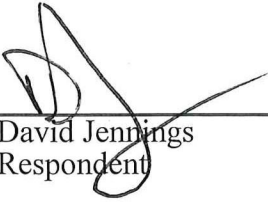
11. David Jennings agrees to pay a civil penalty in the amount of two-thousand-five hundred dollars (\$2,500) associated with violations of RCW 42.52. The Board agrees to suspend one thousand (\$1,000) on the condition that David Jennings complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of one-thousand-five hundred dollars (\$1,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

I. CERTIFICATION

I, David Jennings, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further

certify 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, I understand that I will receive a signed copy.



David Jennings
Respondent

2-21-22

Date

Presented by:



KATE REYNOLDS
Executive Director

3/11/2022

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;
 MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

DATED this 11th day of March 2022.

 Approved liberally
Shirley Battan, Chair

 Approved liberally
Gerri Davis, Vice Chair

 Approved liberally
Jan Jutte, Member

 Approved liberally
Earl Key, Member

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

David Jennings, Respondent Date