

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Window

Respondent.

No. 2022-028

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, David Window 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 August 24, 2022, the Executive Ethics Board (Board) received a complaint alleging that David Window (Mr. Window), an employee of WA State Department of Corrections (DOC), may have violated the Ethics in Public Service Act. The complaint alleged that Mr. Window violated RCW Chapter 42.52, by using state resources for his private benefit and gain.

2. According to the complaint, Mr. Window allegedly used his DOC issued cell phone for "personal reasons, inappropriate reasons, porn," and the like.

3. According to DOC, Mr. Window was hired on June 1, 2006 as a Correctional/Custody Officer 3 (CO). On June 5, 2007, Mr. Window was promoted to Lieutenant.

On January 15, 2015, Mr. Window was transferred to a Correctional Unit Supervisor. On June 1, 2017, Mr. Window was promoted to Captain at Washington State Penitentiary (WSP).

4. In Mr. Window's written response to Board staff, he directly responded to the allegations noted on the complaint form. In response to the allegation of pornography being viewed on his work devices, he stated, "The only thing I have seen on the cell phone that would be close to this would be unsolicited text messages where the phone received them, but I did not click on the web site that was listed on the text. Numerous state employees receive these texts from what I am told and the consensus has been to ignore them as they may be a phishing scam. From the laptop, I am unaware of any of these type instances. The only reason that I would have to go to anything graphic would be for Prison Rape Elimination Act type investigations." Mr. Window further stated, "The paperwork also indicates pictures of Rob Jackson flipping off while at work. This was a picture of a picture and not my creation." Mr. Window further informed Board staff that there would be evidence of social media sites being visited, such as Facebook, Instagram, Twitter, and TikTok. Mr. Window stated, "As a Captain for the WA State Penitentiary, recruiting of our staff is a job function. As part of this function, I have added a new email address through IT DOCWSPenRecruiting to my Outlook. This email address was used on the State-Issued laptop to create profiles on social media platforms."

5. Board staff contacted DOC Human Resources (HR) and inquired about Mr. Window's statement regarding his social media use. DOC provided Board staff with a memo titled "Recruitment Update as of 09/15/22." Part of the memo read as follows: "**Social Media Advertising:** Cpt. D. Window ext: 66438 – Continues to advertise on Facebook, Twitter, Linked In, and Instagram. The expanded Indeed recruitment has continued to be very successful. We continue to receive applicants to an extent that we had to increase our contract with Indeed."

6. As part of this investigation, Board staff obtained a forensic copy of Mr. Window's state issued computer and cell phone. Magnet Axiom software was then used to analyze the contents.

7. In reviewing the contents of Mr. Window's cell phone, Board staff located minimal items. All saved photographs appeared to be consistent with work related tasks, there was no noted improper use of text messages, other than a short series of text messages from March 7, 2022 in which Mr. Window and another unknown individual were texting back and forth about Mr. Window purchasing used golf clubs. They discussed price, the condition of the clubs, and shared some photographs of the golf club set.

8. Regarding Mr. Window's statement about receiving "unsolicited text messages where the phone received them, but I did not click on the web site that was listed on the text," Board staff located five messages in which a link was texted to Mr. Window's cell phone, from various email addresses. Due to the suspicious nature of the messages and provided links, Board staff did not click on the links to investigate further. There was no evidence of Mr. Window visiting the websites on his phone browser. The messages in question were as follows:

- 1/30/22 – Incoming SMS message from *vxcvxcvxc2343@hotmail.com*
Link attached - "ow.ly/c9So50HGGTu?????????"
- 4/23/22 – Incoming SMS message from *mdh86249@gmail.com*
Link attached - "www.px6y7df9q5c.solutions"
- 5/14/22 – Incoming SMS message from *rubynewton478@gmail.com*
Link attached - "? http://glo38gS4ZrI3UY82f.biz ?"
- 5/15/22 – Incoming SMS message from *mdbabul199689@gmail.com*
Link attached - "? http://vagb6fn6ios49q.boutique ?"
- 8/22/22 – Incoming SMS message from *lotaakther2021@gmail.com*
Link attached - "www.wo9tg7ewavfj7j4.art"

9. In reviewing the contents of Mr. Window's laptop, Board staff located the following items which do not appear work related:

➤ **August 2022:**

Several Google searches and websites visited related to home mattress delivery services.

Several websites visited related to RV's and motorhomes.

➤ **Social Media:** TikTok, YouTube, LinkedIn, Facebook, and Instagram all visited several times. Evidence would suggest that account logins were consistent with DOC recruitment, however several saved photos in both Google and Edge cache history would indicate that personal social media usage was also occurring (blogger pages visited, female models, etc.)

➤ Several news websites visited, including Fox News and Republicworld.com

➤ RVusa.com visited several times

➤ **Media:** Over 2,000 photographs flagged as evidence from both Google Chrome and Microsoft Edge web history. Several dozen photos were personal in nature, including family photos, children photos, etc. Several hundred photos were flagged that were related to news websites visited, sports news searches, celebrity news, and RV sales searches.

B. CONCLUSIONS OF LAW

1. 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.

2. 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. 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 Window 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 Window 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 Window 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 Window 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 Window 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 Window 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 Window 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 Window 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 Window 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 Window agrees to pay a civil penalty in the amount of five-hundred dollars (\$500) associated with violations of RCW 42.52. The Board agrees to suspend one-hundred-fifty dollars (\$150) on the condition that David Window 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 three-hundred-fifty dollars (\$350) 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 Window, 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 Window
Respondent

3.9.2023
Date

Presented by:

KATE REYNOLDS 5/12/2023
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

✓ 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 12th day of May 2023.

Approved Virtually
Jan Jutte, Chair

Approved Virtually
Kelli Hooke, Vice Chair

Approved Virtually
Shirley Battan, Member

Approved Virtually
Earl Key, Member

Approved Virtually
Megan Abel, Member

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

David Window, Respondent Date