

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

David Brewer

Respondent.

No. 2022-030

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, David Brewer 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 5, 2022, the Executive Ethics Board (Board) received a complaint alleging that David Brewer (Mr. Brewer), an employee of the Washington State Department of Corrections (DOC), may have violated the Ethics in Public Service Act. The complaint alleged that Mr. Brewer violated RCW Chapter 42.52, by using state resources for non-work related activities.

2. According to the complaint, Mr. Brewer used his DOC issued cell phone for personal use, including sending/receiving photos, texts, videos, drinking, swearing, etc.

3. According to DOC, Mr. Brewer was hired on November 2, 2007 as a Corrections & Custody Officer (CO). From May 22, 2011 to June 7, 2012, Mr. Brewer was promoted to a non-permanent Correctional Sergeant. Mr. Brewer worked as a permanent Correctional Sergeant from June 8, 2012 to March 3, 2016. Mr. Brewer worked as an acting Lieutenant from August 24, 2018 to November 11, 2018. On November 12, 2018, Mr. Brewer became a Lieutenant under WMS review. Mr. Brewer became a permanent Lieutenant on November 12, 2019 and held that position until May 22, 2022. Mr. Brewer became an acting Correctional Unit Supervisor on May 23, 2022 and is presently in that role.

4. Stemming from a public disclosure request related to Mr. Brewer, filed by the complainant, several items of interest were allegedly located on his state issued cell phone, including:

- Text messages, personal in nature
- Photographs, personal in nature
- Videos, personal in nature, to include an inmate being filmed

5. As part of this investigation, Board staff requested a copy of both Mr. Brewer's state issued cell phone contents and a copy of his state issued computer hard drive. Upon receipt, the hard drive was processed and reviewed utilizing Magnet Axiom software.

6. In reviewing Mr. Brewer's state issued cell phone contents, several items were located, including:

- "Selfie" type videos of what appears to be Mr. Brewer lifting weights in a gym facility.
- Personal photographs, including of what appears to be family, of alcohol (including of Mr. Brewer and others consuming alcohol), memes, tattoos, and sports.
- Photographs of what appears to be home improvement projects.
- A video taken of an inmate doing a workout in the prison yard, clearly without the inmates knowledge – due to it being shot from a distance through several prison fences.
- Text messages personal in nature, including:

- “This beer tastes amazing ☺”
- “Lol, have a good with that cutie ☺”
- “Awesome! We have 160 push-ups to do for shit heads being late ☺”
- “Lol, he probably thought I was a white supremacist☺”
- “Oh, ok. That makes sense. I told him I would extract his tooth for free☺”
- “typical Sureno ☺ gotta call the homies ☺”
- “Ok. I called it shithead and it came right to me☺”
- “Outa beer, gonna finish this up now”
- “Of beer? I guess I’m still in the graduate program ☺”
- “Lmmfao. I found Kokanee for 11 bucks a 12 pack.”
- “Yes. Already been to Walmart, worked out and now relaxing having a beer.”

7. In reviewing the contents of Mr. Brewer’s state issued computer, there was evidence of web browsing for personal use, including:

- Amazon visits (38 in total)
- Google searches, including:
  - norse pagan religion
  - how to convert to norse religion
  - norse pagan church near me
  - why is Inslee such a socialist
  - white girl wasted
  - how not to be intimidating
  - am i intimidating quiz
  - ways to soften your appearance so I’m not as intimidating
  - bronco sasquatch edition
  - houses for sale Lincoln city Oregon
  - fat guy fishing with nunchucks.
- Social media visits (498 in total, between October 27, 2020 - June, 2022), including:
  - Twitter
  - LinkedIn
  - Instagram
  - Reddit
  - 9gag (Board staff researched, it’s the “largest meme community on the internet”)
- Between the dates of March 31, 2022 – June 2022, over 1,500 web visits, including:
  - Youtube
  - Wallowa.com (a local news website)
  - Spydialer.com (a phone number lookup service)
  - Multiple visits to Ford.com
  - Multiple visits to Zillow and Redfin

- Livescience.com (science news story website)
- Guardian.com
- Washingtonpost.com
- Nypost.com
- Politico.com
- Muscleandstrength.com
- Clarkcountytoday.com
- Tri-cityhearld.com
- NBCrightnow.com
- Seattletimes.com
- Q13fox.com
- Harleyliberty.com (A motorcycle news website)
- Complex.com (A pop culture news/sports/celebrity website)
- Forbes.com
- Hotcars.com

## 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer 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 Brewer agrees to pay a civil penalty in the amount of five-thousand dollars (\$5,000) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand-dollars (\$1,000) on the condition that David Brewer 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 four-thousand- dollars (\$4,000) 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 Brewer, 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 Brewer  
Respondent

  
Date

Presented by:

K. Reynolds 5/12/2023  
KATE REYNOLDS 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;

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REJECTED in its entirety;

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MODIFIED. This stipulation will become the order of the Board if the

Respondent approves\* the following modification(s):

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DATED this 12th day of May 2023.

Approved Virtually  
Jan Jutte, Chair

*Approved Virtually*  
Kelli Hooke, Vice Chair

*Approved Viderley*  
Shirley Battan, Member

Approved: Earl Key, Member

*Approved Viterally*  
Megan Abel, Member

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

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David Brewer, Respondent

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Date