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7 BEFORE THE WASHINGTON STATE  
8 EXECUTIVE ETHICS BOARD

9 In the matter of:

10 MIKE CULLEY,

11 Respondent.

OAH NO. 05-2022-AGO-00048

EEB NO. 2021-035

FINDING OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

12  
13 **I. PROCEDURAL HISTORY**  
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15 1.1 On August 5, 2021, the Executive Ethics Board (Board) received a complaint alleging  
16 that Mike Culley, an IT Application Development – Journey/Web Technical Lead and  
17 Application Developer with the Department of Labor and Industries (LNI), may have violated  
18 the Ethics in Public Service Act, RCW 42.52 (Ethics Act).

19 1.2 On January 14, 2022, the Board found reasonable cause to believe a violation of the  
20 Ethics Act occurred, and the penalty could be \$500 or less.

21 1.3 On March 13, 2023, the Board issued the Amended Investigative Report and Board  
22 Determination of Reasonable Cause, which included additional facts that occurred after  
23 January 14, 2022, but were related to the proceeding. The Board found the penalty could be  
24 more than \$500.  
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1 1.4 After due and proper notice, the Board held a hearing via Zoom on December 8, 2023.  
2 Administrative Law Judge (ALJ) T.J. Martin, from the Office of Administrative Hearings  
3 (OAH), conducted the proceedings, and Board Chair Jan Jutte, and members Kelli Hooke,  
4 Megan Abel, and Cameron Comfort were present. Also present was Leo Roinila, Assistant  
5 Attorney General, legal advisor to the Board.

6 1.5 Julia Eisentrout, Assistant Attorney General, represented Board staff. The Board's  
7 Executive Director Kate Reynolds and other Board staff members were present.

8 1.6 Mr. Culley was present and represented himself, pro se.

9 1.7 Board staff offered Exhibits 1-28, listed below, which were admitted into evidence at  
10 hearing. The Board was provided copies of the documents admitted as exhibits:

- 11 1. Complaint, dated August 5, 2021 (2 pages);
- 12 2. LNI Investigation Report, dated August 7, 2021 (12 pages);
- 13 3. Respondent's Facebook Post, undated (1 page);
- 14 4. Email Regarding Respondent's Position Description With Highlights, dated  
January 11, 2023 (15 pages);
- 15 5. LNI Wellness 360 Facebook Group Information, undated (4 pages);
- 16 6. LNI Wellness 360 Program Information, undated (3 pages);
- 17 7. Emails between Respondent and Emily Skeers, various dates (4 pages);
- 18 8. Emails between LNI Staff and Respondent Regarding LNI Facebook Page,  
various dates (3 pages);
- 19 9. LNI Investigation Report, dated February 8, 2023 (28 pages);
- 20 10. Counseling Memo, dated December 2, 2021 (35 pages);
- 21 11. (Whoever's) Timeline of LNI's Wellness 360 Facebook page, undated  
(11 pages).
- 22 12. LNI Wellness 360 Facebook Program Information Regarding Start-up, dated  
May-October 2013 (4 pages);
- 23 13. Respondent's Comment on Rich Roseler's Post on LNI Wellness 360 Facebook  
Page, date unknown (1 page);
- 24 14. Counseling Memo, dated December 2, 2021 and signed by Respondent on  
December 8, 2021 (6 pages);
- 25 15. Respondent's Position Description, dated March 9, 2022 (11 pages);
- 26 16. Emails between LNI Staff and Respondent Regarding LNI Facebook Page, v  
arious dates (4 pages);
17. Emails between Respondent and Emily Skeers, various dates (6 pages);
18. Respondent's Email to LNI Staff Regarding LNI Wellness 360 Facebook Page,  
various dates (2 pages);
19. Respondent's Email to LNI Staff Regarding Facebook Group Name Change,  
dated January 12, 2023 (2 pages);
20. Respondent's Declaration to the Board, dated October 20, 2022 (18 pages);
21. LNI Wellness 360 Webpage, undated (2 pages);
22. Respondent's Motion to Dismiss, dated May 9, 2022 (71 pages);

- 1 23. Emails Regarding LNI Wellness 360, various dates (4 pages);
- 2 24. Emails between LNI Employees Regarding LNI Wellness 360 Facebook Page,
- 3 25. Emails Regarding Emily Skeers' Contact Information, dated June 8, 2022
- 4 26. Screenshot of LNI Microsoft Teams Chat, date unknown (1 page);
- 5 27. Respondent's Response to Investigation Report, dated October 1, 2021
- 6 28. Respondent's Public Records Request Regarding Position Description Forms,
- 7 dated March 18, 2022 (1 page).

8 1.8 Mr. Culley offered Exhibits A – R, listed below, which were admitted into evidence at  
9 hearing. The Board was provided copies of the documents admitted as exhibits:

- 10 A. EEB Complaint;
- 11 B. LNI Wellness 360 FB Screens and Log;
- 12 C. Mike Culley Position Description Form April 2019;
- 13 D. LNI First Investigative Report;
- 14 E. Mike Culley's Facebook Posts;
- 15 F. Planet Fitness Terms and Conditions;
- 16 G. Mike Culley's Plant Fitness App Info;
- 17 H. Mike Culley's Bank Statement;
- 18 I. June 8, 2022 Email from Mike Culley;
- 19 J. Facebook Group Pages, FB Messenger Texts;
- 20 K. Answers from Emily Parnham;
- 21 L. LNI Second Investigation Report;
- 22 M. Statewide UMCC Emails – Mendez;
- 23 N. Email from Mendez – Tim Church;
- 24 O. Misc. Emails, Facebook Log, EEB;
- 25 P. Tim Church Email, October 10, 2022;
- 26 Q. Mike Culley Email – March 21, 2022; and
- R. Timeline of Case Related Events – Culley.

1.9 The proceedings were recorded and open to the public.

1.10 The Board heard the testimony of Tim Church and Connie Rus.

1.11 The hearing was adjourned on December 8, 2023, and continued until January 12,  
2024.

1.12 After due and proper notice, the Board reconvened the hearing via Zoom on January  
12, 2024. ALJ T.J. Martin from OAH conducted the proceedings, and Board Chair Jan Jutte,  
and members Kelli Hooke, Megan Abel, and Cameron Comfort were present. Also  
present were Leo Roinila and Eric Allen, Assistant Attorneys General, legal advisors to

1 the Board.

2 1.13 Mr. Culley was present and represented himself, pro se.

3 1.14 The proceedings were recorded and open to the public.

4 1.15 The Board heard the testimony of Justin Cotte, Teresa Parsons, and Respondent Mike  
5 Culley.

6 1.16 The hearing was adjourned on January 12, 2024.

7 Based on the evidence presented, the Board enters the following Findings of Fact, Conclusions  
8 of Law, and Final Order.

9  
10 **II. FINDINGS OF FACT**

11 The Board finds the following facts were proven by a preponderance of the evidence:  
12

13 2.1 Mr. Culley was hired by LNI in February of 2008, and is an IT Application  
14 Development – Journey/Web Technical Lead and Application Developer. At the times relevant  
15 to these investigations, Mr. Culley reported to Connie Rus, who was the Web Product  
16 Operations Manager in the Web Communications Services Division. Ms. Rus reported to the  
17 Assistant Director of the Web & Communications Services Division, Tim Church. Ex. 2.

18 2.2 On August 5, 2021, the Board received an anonymous complaint alleging that Mr.  
19 Culley violated the Ethics in Public Service Act by encouraging members of the LNI Wellness  
20 360 Facebook group to join Planet Fitness, and to provide his name to the gym if they joined.  
21 The complainant presumed this was because “gyms give incentives, such as free membership  
22 months for referrals.” Ex. 1.

23 2.3 The complaint included a screenshot of the Facebook post at issue, which was a  
24 comment Mr. Culley made under a post. The comment included the following language, with  
25 Mr. Culley stating as follows:  
26

...

1 The only time it's too late to start being more healthy is when you are in the hospital.

2 1. Start a walking routine today.

3 2. Join a gym. Planet Fitness is only \$10 per month (give them my name when you  
4 join)

5 ...

6 Ex. 3. At the time of his comment, Mr. Culley was an administrator of the LNI

7 Wellness 360 Facebook group, along with a few other LNI employees. Ex. 2.

8 2.4 The LNI Wellness 360 Facebook group is part of the LNI Wellness 360 program. LNI

9 Wellness 360 Wellness program services are outlined in LNI policy, and include seasonal

10 wellness campaigns, as well as activities like yoga classes, Weight Watchers groups, and guest

11 speakers, among other activities. Ex. 6. There is also an internal LNI Wellness 360 website that

12 includes a link to the LNI Wellness 360 Facebook group. Ex. 21.

13 2.5 The LNI Wellness 360 Facebook group was created at the direction of Doug Spohn,

14 former manager of the LNI Wellness Program. Exs. 2, 9, 12. Emily Parnham, a contractor with

15 whom Mr. Spohn worked, created the page. Ex. 12. At the time Ms. Parnham created the LNI

16 Wellness 360 Facebook group, Mr. Spohn obtained the approval of Kim Contris, Assistant

17 Director, Web and Communication Services, LNI. Exs. 2, 9, 12. A document circulated at LNI

18 discussed the intent, administration, and strategy surrounding the launch of the LNI Wellness

19 360 Facebook group. Ex. 12. The same document specified that the page would be used to

20 promote program events, share wellness information, and engage with LNI employees. *Id.*

21 Only LNI employees would be allowed as members of the group. *Id.* During Covid, the LNI

22 Wellness 360 group became a means for LNI employees to communicate about internet

23 connectivity, tips for troubleshooting tech issues, and allowed for "water cooler talk" while

24 everyone worked from home. Ex. 2.

25 2.6 Mr. Culley volunteered to be an administrator of the LNI Wellness 360 Facebook

26 group, and became one sometime in 2014. Ex. 2. Mr. Spohn explained the purpose of the page

to Mr. Culley and checked in once a week. *Id.* Administrator duties were not and are not part

1 of Mr. Culley’s position description form. Ex. 15. In July of 2021, Mr. Spohn saw an article  
2 that Mr. Culley posted to the LNI Wellness 360 Facebook group about California’s approach  
3 to Covid vaccination or testing for state workers. Ex. 2. When Mr. Spohn read through the  
4 comments to the article, he “didn’t think it was a good thing” so he provided guidance to Mr.  
5 Culley on “how to back off and somehow curtail how the comments were going.” Ex. 2.  
6 Around the first week of August 2021, Mr. Spohn became aware of Mr. Culley’s comment  
7 regarding Planet Fitness. Ex. 2. Mr. Spohn said the comment made him flinch, because it could  
8 make it look like Mr. Culley was getting a “kickback.” *Id.* Mr. Spohn spoke with Mr. Culley  
9 about the “kickback” comment, and Mr. Culley said that made sense and “didn’t push back.”  
10 *Id.*

11 2.7 As a result of his involvement in the LNI Wellness 360 Facebook group and, among  
12 other things, his post regarding Planet Fitness, LNI issued Mr. Culley a Counseling Memo. Ex.

13 14. As part of the memo, Mr. Culley was required:

14 [T]o inform his supervisor immediately “if you want to volunteer and/or are asked to  
15 participate in an LNI related activity, event, project or committee. If you’re not sure let  
me know immediately so we can discuss it.

16 Ex. 14. The memo also noted that Mr. Culley “failed to notify [Ms. Rus] or seek [Ms. Rus’s]  
17 permission to take on the role of an administrator for the LNI Wellness 360 Facebook page.”

18 *Id.* On December 8, 2021, Mr. Culley signed acknowledging the memo and sent back a written  
19 response. *Id.*

20  
21 2.8 After the initial Board determination of reasonable cause, and while the matter was  
22 pending, Mr. Culley used his own work time, the work time of other LNI employees, and his  
23 state email account, to investigate the origin of the LNI Wellness 360 Facebook group and to  
24 make recommendations regarding how LNI managed the group. Exs. 7, 9, 11, 13, 16, 17, 18,  
25 20, 25, 26, 28. He sought contact information for Ms. Parnham, the contractor that created the  
26 page for Mr. Spohn, then emailed her to gather information about the creation of the LNI

1 Wellness 360 Facebook group that he believed was relevant to the proceeding before the  
2 Board. Exs. 7, 17, 25. He continued to make recommendations and reach out to LNI employees  
3 after he was told that his division no longer managed LNI social media accounts. Ex. 18.

4 2.9 In October of 2022, Mr. Culley went to lunch with Mr. Spohn, who had retired from  
5 LNI. Ex. 9. He told Mr. Spohn that Mr. Spohn still “owned” the LNI Wellness 360 Facebook  
6 group, and that Mr. Spohn needed to transfer ownership to someone who still worked at LNI.  
7 *Id.* At Mr. Culley’s direction, Mr. Spohn sent messages to Mr. Culley purporting to transfer  
8 ownership of the LNI Wellness 360 Facebook group from Mr. Spohn to Mr. Culley. Exs. 9, 11.

9 2.10 Mr. Culley contacted a current LNI Wellness 360 Facebook group administrator, and  
10 asked to again be made an administrator. Ex. 11. He removed Matt Ross from the role of  
11 administrator to member, and attempted to remove other administrators, but was unable to do  
12 so. *Id.* On October 17, 2022, Mr. Culley made a lengthy post, stating that he was the current  
13 owner of the group, the group was not an LNI property, did not follow Governor’s Executive  
14 Order 16-01 as required, and that “there is nothing on record that classifies this page/group as a  
15 state resource...” Ex. 11. Mr. Culley stated that he would “go to bat on this issue” because it  
16 was part of his job to ensure all agency web properties adhere to agency web standards, and  
17 that even if he was removed from the group he would continue to “resolve this issue.” *Id.* In  
18 addition, on October 28, 2022, Mr. Culley commented that he would be leaving the group, as  
19 the “About” section had been “changed severely” and he wanted to unjoin his personal  
20 Facebook account from the LNI Wellness 360 Facebook group to ensure “clear separation  
21 between my personal Facebook account activities as my work as a state employee.” *Id.*

22 2.11 Both Ms. Rus and Mr. Church stated the LNI Wellness 360 Facebook group was an  
23 LNI owned resource. Testimony of Connie Rus and Tim Church; see also Exs. 2, 9, 18, 23.  
24 According to Ms. Rus, Mr. Culley was not charged with managing social media; there was a  
25 separate position responsible for that. Rus Testimony; see also Ex. 18. Mr. Culley’s listed job  
26

1 duties and responsibilities in his Position Description Form did not include management of  
2 social media. Ex. 15.

3 2.12 Mr. Culley has stated that the LNI Wellness 360 Facebook group was not an LNI  
4 owned group. Exs. 2, 9. He also maintains that he is responsible for monitoring the LNI  
5 Wellness 360 Facebook group for compliance with LNI and state policy and rules. Exs. 2, 9.

### 7 III. CONCLUSIONS OF LAW

8 The Board issues the following legal conclusions:

9 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which  
10 authorizes the Board to enforce the Ethics in Public Service Act, Chapter 42.52 RCW, with  
11 respect to employees in the executive branch of state government. The Board has jurisdiction  
12 over Mike Culley, whose actions occurred while he was a state employee. The complaint was  
13 filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW  
14 42.52.420, and an adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500.  
15 All the required procedural notices have been provided.

16 3.2 The Ethics in Public Service Act governs the conduct of state officers and employees.  
17 Under RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

18 3.3 A state employee may not use state resources under his official control for his own private  
19 benefit or gain, or for the private benefit or gain of another, under RCW 42.52.160(1),  
20 which states:

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

24 ...

25 3.4 WAC 292-110-010(3) states, in part:

26 ...

(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.

...

(b) A state officer or employee may use state resources for wellness or combined fund drive activities as long as use conforms with (a) of this subsection or as authorized in state law and rule.

3.5 As a preliminary matter, the LNI Wellness 360 Facebook group is an LNI resource for LNI employees, the use of which is subject to the Ethics in Public Service Act. As discussed above, an LNI employee directed the creation of the group, intended that it was part of LNI's Wellness 360 program, established guidelines for its use by employees and what content would be posted, titled it to include "LNI Wellness 360" and also managed content on the page. See Exs. 2, 9, 12.

3.6 Based on the above stated Findings of Fact, the Board concludes that Mr. Culley used the LNI Wellness 360 Facebook group for the private benefit or gain of Planet Fitness by recommending that group members join Planet Fitness. When Mr. Culley encouraged group members to join Planet Fitness and "give them his name," he endorsed Planet Fitness to other LNI employees. Mr. Culley thus promoted Planet Fitness, and it received a benefit from Mr. Culley's post. As Mr. Culley's use promoted an outside organization, it does not qualify as de minimis.

3.7 In addition, state employees are prohibited from securing special privileges for themselves or on the behalf of other person. As outlined in RCW 42.52.070:

(1) 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.

1  
2 3.8 Mr. Culley's post violates this provision in two ways. First, his post made it appear as if  
3 Mr. Culley would receive a benefit if any LNI employees joined Planet Fitness and provided  
4 his name when they did so. Because Mr. Culley obtained his membership of the LNI Wellness  
5 360 Facebook group through his employment with LNI, it is a violation to infer to others he  
6 could receive a benefit from promoting Planet Fitness through his use of the LNI Wellness 360  
7 Facebook group. Second, Mr. Culley's post secured a special privilege for Planet Fitness, as it  
8 received the benefit of promotion and recommendation above all other gyms.

9 Additionally, Mr. Culley violated RCW 42.52.160 when he used his state email, and his  
10 work time, as well as the LNI Wellness 360 Facebook group, to gather information about and  
11 take steps he believed would support his arguments before the Board. The use does not qualify  
12 as de minimis, because, as a result of Mr. Culley's actions in October, a second LNI  
13 investigation took place, which is a cost to the state.

14 3.9 Mr. Culley's interference with the LNI Wellness 360 Facebook group, as well as his  
15 emails gathering information related to his ethics proceeding, also violated RCW 42.52.070.  
16 Mr. Culley used his position within LNI to convince another LNI employee to make him an  
17 administrator to make changes to the group that he believed would support his argument the  
18 group was not an LNI property or resource. Likewise, after he was told that upper management  
19 considered the LNI Wellness 360 Facebook group to be an LNI resource, he continued to  
20 gather information and make recommendations about the use of the page. He took these  
21 actions through benefit of his employment with LNI, to benefit himself in his proceeding  
22 before the Board. Management of LNI's social media accounts was not one of his job duties.

23 3.10 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per  
24 violation or three times the economic value of anything received or sought in violation of the  
25 Ethics in Public Service Act, whichever is greater. The Board concludes that a \$2,000 penalty  
26

1 is appropriate in this matter based on Mr. Culley’s violations of RCW 42.52.160, RCW  
2 42.52.070, and the aggravating factors discussed below.

3 3.11 In determining the appropriate sanction in this case, including the amount of any civil  
4 penalty, the Board determines, under WAC 292-120-030(2)(a) and (e), that Mr. Culley’s  
5 violations were continuing in nature, and tended to reduce public respect for or confidence in  
6 state government or state government officers or employees. There are no mitigating factors.

7  
8 **IV. FINAL ORDER**

9 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby  
10 ordered that Mike Culley is assessed a total monetary civil penalty of \$2,000 based on his  
11 violations of RCW 42.52.070(1) and RCW 42.52.160(1).

12 4.2 The total amount of \$2,000 is payable in full within 90 days of the effective date of this  
13 order.

14  
15 DATED this 25th day of March, 2024.

16 WASHINGTON STATE EXECUTIVE ETHICS BOARD

17  
18   
19 Jan Jutte, Chair

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1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request  
4 must be in writing and must include the specific grounds or reasons for the request. The request  
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days  
7 from the date the request is filed, the Board does not either dispose of the petition or serve the  
8 parties with written notice specifying the date by which it will act on the petition.  
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before  
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under  
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures  
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the  
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on  
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing  
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
- 22 (2) The name and mailing address of the petitioner’s attorney, if any;
- 23 (3) The name and mailing address of the agency whose action is at issue;
- 24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,  
25 or brief description of the agency action;

- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led to  
2 the agency action;
- 3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 4 (7) The petitioner's reasons for believing that relief should be granted; and
- 5 (8) A request for relief, specifying the type and extent of relief requested.  
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The  
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs  
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been  
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the  
13 Board.