

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2019-01

**JOHN D. BROWN,
Sergeant,
Shepherd University Police Department**

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and John D. Brown freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(f) to resolve all potential charges arising from allegations in the above-referenced Complaint.

FINDINGS OF FACT

1. John D. Brown ("Respondent" or "Brown") is employed by Shepherd University as a law enforcement officer in its Police Department.
2. At all times pertinent herein, Respondent was a "public official" or "public employee" as defined in the Ethics Act, at W. Va. Code § 6B-1-3(j) and (k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by public officials and employees, such as the Respondent. W. Va. Code § 6B-1-1 through § 6B-3-11.
4. The Police Department has cruisers which its officers use during their work shift to patrol the University campus. The officers, except for the K-9 officer, do not take their cruisers home, and the Shepherd University Vehicle Use Policy states that University vehicles, which include the cruisers, are to be used for official University business only.

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5. Brown's son attends an elementary school near the University. In the 2017-2018 school year and the fall of the 2018-2019 school year, the Respondent, during his work hours, used his Shepherd University cruiser to drive to the school to pick up his son after school when his wife was unable to do so. The Respondent then brought his son back to campus in the cruiser. The Respondent believes he used the cruiser to pick up his son on approximately 20 occasions, but he cannot state with certainty the number of times he used the cruiser to transport his son.

6. The Respondent states that he used the cruiser, as opposed to his personal vehicle, in case he needed to respond to an emergency at the University, but he acknowledges that using the cruiser to pick up his son was not authorized by University policy.

7. Brown ceased using the Shepherd University cruiser to pick up his son at or around the time a Complaint was filed against him with the West Virginia Ethics Commission.

8. The round-trip mileage from Shepherd University to the elementary school is approximately 13.4 miles. Based upon the 2018 IRS mileage reimbursement rate of 54.5 cents per mile, the value to the Respondent of using the Shepherd cruiser for 20 trips was \$146.06.

RELEVANT LEGAL PROVISION

W. Va. Code § 6B-2-5(b)(2) states, in relevant part:

Use of public office for private gain. -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of

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his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

CONCILIATION OF VIOLATION

I, John D. Brown, the Respondent, admit that I violated the private gain provision in the West Virginia Governmental Ethics Act, at W. Va. Code § 6B-2-5(b), when I used a Shepherd University cruiser for personal purposes.

In order to resolve this matter, I am entering into this Agreement. I understand that for this Conciliation Agreement to be finalized, that the Ethics Commission must approve it and determine which sanctions to impose.

In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. A fine in the amount of \$300 to be paid by September 15, 2019;
2. Training on the West Virginia Governmental Ethics Act, either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before September 15, 2019. I shall provide written confirmation of the completion of this training to the Ethics Commission, and
3. Reimbursement to Shepherd University in the amount of \$146.06 for my personal use of the cruiser by September 15, 2019.

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the

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Complaint against me will proceed before the Probable Cause Review Board, where it will be processed in accordance with the West Virginia Code and the Ethics Commission's Legislative Rules.

If the Ethics Commission approves the Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W. Va. Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public.

8/1/19
Date


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

6/8/19
Date


John D. Brown, Respondent

JDB 

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**JOHN D. BROWN,
Sergeant, Shepherd University, Police Department, West Virginia**

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provision and Conciliation of Violation in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and John D. Brown as required by W. Va. Code § 6B-2-4(t). In accordance with W. Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. A fine in the amount of \$300 to be paid by September 15, 2019.
2. Training on the West Virginia Governmental Ethics Act and Open Meetings Act, either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before September 15, 2019. John D. Brown shall provide written confirmation of the completion of this training to the Ethics Commission.
3. To reimburse Shepherd University \$146.06 for his personal use of the cruiser by September 15, 2019.

8/1/19
Date


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission