

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Nicole Vermillion
Respondent.

No. 2016-017

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, NICOLE VERMILLION, 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 January 25, 2016, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO) alleging that Nicole Vermillion, Forms and Records Analyst 1 with the Department of Ecology (ECY) may have violated the Ethics in Public Service Act when she used state time and resources for personal benefit.

2. Ms. Vermillion was originally hired by ECY in June 2008 as a Forms and Records Analyst 1. Due to budget issues, she was laid off after a year. She was rehired by ECY as a Forms

and Records Analyst 1 in October 2013. For all times pertinent to this investigation, she has been employed as such working from the Eastern Regional Office (ERO) in Spokane.

3. The complainant initiated a whistleblower complaint and told the SAO investigator that between 2014 and 2015, Ms. Vermillion had been spending a large amount of work time using her state computer to work on coursework for an online class she was taking. They said that after a receptionist retired in October 2014, Ms. Vermillion began filling in at the reception desk and was spending several hours a day on the computer doing coursework. They said this was apparently being done with her supervisor's approval, because her co-workers as well as supervisors were aware of what was happening.

4. They were unsure how long this activity had been occurring but it was obvious since she had moved to reception. Prior to filling in at the reception desk, Ms. Vermillion's usual workstation was located in the basement. They told the SAO investigator Ms. Vermillion continued coming to the reception area to do coursework even after the new receptionist had been hired and trained.

5. The complainant also said Ms. Vermillion regularly engaged other employees in conversations about her coursework and asked them to proofread assignments for her. Additionally, when final exams/papers for her course were approaching the activity increased and she asked several coworkers to listen to and review her presentations in the ERO conference room.

6. The complainant knew the online school was located in Spain, and said the time difference made it difficult for her to coordinate with other students and instructors online after work hours.

7. Additionally the complainant stated in February 2015 Ms. Vermillion used the conference room at the ERO to engage in a video conference related to her coursework. An

outside group arrived to use the conference room but was unable to enter because Ms. Vermillion was not through yet.

8. The Agency's Online Event Management system confirmed Ms. Vermillion had booked their conference room on February 19, 2015 from 7:30 am to 8:00 am for a "Tribunal."

9. During the SAO investigation, five other witnesses/coworkers were interviewed:

- **Witness #1** stated they were aware Ms. Vermillion had been given permission to do coursework and they occasionally discussed the coursework with her.
- **Witness #2** said they regularly saw Ms. Vermillion at the reception desk and described her as doing coursework "more often than not."
- **Witness #3** stated they did not know anything.
- **Witness #4** said Ms. Vermillion was at reception about 50% of the day even after the new receptionist had been hired and trained. They described the amount of time she spent on coursework as "exorbitant." They also described the same situation as the complainant where a group had come to ERO for a meeting and had to wait to use the conference room because Ms. Vermillion was completing coursework.
- **Witness #5** stated they would see the subject working on coursework but said she only did it when she had nothing else to do.

10. Ms. Vermillion told the SAO investigator that she had been taking an online business-management course through Cruyff Institute. She felt her coursework was related to her employment and she hoped to use her education to advance her career with the department. She had been granted permission from her supervisor to do her coursework during breaks and periods of downtime at reception.

11. Ms. Vermillion said the reception duties frequently took her away from her regular workstation, and she was not able to work on her regular duties while at reception. Since she had

fewer duties at reception, she had quite a bit of downtime. She would use breaks and lunch to do coursework.

12. Ms. Vermillion also responded to the complaint about her use of the ERO conference room. She said she had reserved the conference room from 7:30 am to 8:00 am to do a video conference related to her online course. The ERO did not open until 8:00am and her work shift did not begin until 8:00 am. The group that was scheduled to use the conference room that morning, was not scheduled until 8:30am. A few members of the group arrived early by 8:00 am, and only had to wait a couple of minutes for her to finish. She said she was finished and left the conference room by 8:02 am.

13. Amy Hoeche (Ms. Hoeche) was Ms. Vermillion's supervisor from October 2013 to October 2014. She left the office in October 2014. She confirmed to the SAO investigator she had given Ms. Vermillion permission to do coursework during periods of downtime at reception as long as it did not interfere with her job duties. An email exchange between Ms. Hoeche and Ms. Vermillion indicates that permission was granted as early as January/February 2014. There was no indication Ms. Hoeche reviewed the coursework prior to granting permission or if she determined it was job related.

14. The computer hard drives from Ms. Vermillion's desk computer and the reception desk were examined. The forensic reports showed that some of the internet history files on the computers had been overwritten, so the data collected was sporadic relative to dates.

15. From her workstation computer, 15 days between February 6, 2015 and March 5, 2015 were examined. From the reception desk computer, 60 days between October 6, 2014 and March 5, 2015 were examined.

16. Between both computers, there were 22.5 hours of sustained browsing activity on sports-business management and other non-work-related websites. Most of the activity occurred

over 13 non-consecutive days from October 2014 to January 2015 where Ms. Vermillion spent between 30-330 minutes at a time browsing. Ms. Vermillion spent 266 minutes browsing over 5 days in October 2014 and 623 minutes browsing over six days in December 2014. The largest single use was 330 consecutive minutes on December 14, 2014. Additionally the following evidence was found:

- 106 visits to non-work-related websites
- Seventeen documents related to coursework at a sports-business-management college (Cruyff Institute).
- Eighty-Four trace records that indicated the subject had accessed personal email and cloud services regarding her coursework.

17. Board staff reviewed information via the website for the Cruyff Institute. It is an international institute founded in 1999, “aimed at educating athletes, sport and business professionals in the field of Sport Management.” The Cruyff Institute provides courses, and postgraduate degrees in Sport Management, Sport Marketing and Sponsorship, Football (Soccer) Management, and Coaching.

18. Ms. Vermillion submitted her Final Postgraduate Project in January 2016 under the Football Management Degree Program. The project title was *FIFA: Beyond Challenge World Cup*.

19. Ms. Vermillion described the course through the Cruyff Institute as a business management course. The course was sports related but the primary reason she chose a sport related course was because it was interesting. She cited four areas to the investigator where she felt it helped her better perform her job duties:

- **Strategic Framework:** She said her understanding of business helped her when she worked on the departments’ “strategic framework.”
- **HR:** The coursework better helped her carry out an HR related duty: sitting on an interview panel.
- **Marketing:** As the Combined Fund Drive coordinator for her office, she said the coursework helped her better market the CFD.

- **Facilities Management:** she said her coursework helped her better utilize central files.

20. Ms. Vermillion told the SAO investigator that she worked on the course during periods of downtime and that she always finished work related duties first. Ms. Vermillion also said she had not had ethics training until after this investigation was completed. Ms. Vermillion was scheduled for ethics training in February 2014 but had called in sick that day. Her personnel file indicated she had read the Department's policy on ethics and use of state resources.

21. Grant Pfeifer (Mr. Pfeifer), the Regional Director, told the SAO investigator that after Ms. Vermillion's supervisor left in October 2014, he became her de-facto supervisor. He was not used to supervising administrative operations. Another supervisor was hired in March 2015 but left the following month. Another supervisor was then hired May 2015 and is now in place. He said in hindsight the amount of supervision at the office was something he would have done differently. He knew the subject was in college but did not realize she was using work time for it. He said the previous supervisor should not have granted permission.

22. Mr. Pfeifer also recalled the incident where Ms. Vermillion was using the conference room for a course-work related video conference and visitors could not enter. The investigator asked Mr. Pfeifer if employees are allowed to use the conference room for personal reasons. He stated employees are allowed to use conference rooms for non-work-related events, yoga during lunch periods for example, however, those events may not interfere with any work-related use of the rooms.

23. Board staff reviewed Ms. Vermillion's browsing history not associated with Cruyff Institute and found the majority of it also related to sports/soccer. The browsing history indicates she began logging into the United States Sports Academy (USSA) in February 2015.

USSA offers various levels of online degrees in Sports Science (Coaching, Sports Strength and Conditioning, Sports Management and Sports Studies).

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

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

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

.....

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources 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 officer's or employee's official duties; and

(v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, Ms. Vermillion used state resources (time) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Ms. Vermillion was given permission from her supervisor to do her course work on state time.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Nicole Vermillion 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. Nicole Vermillion 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. Nicole Vermillion further agrees that the evidence available to the Board is such that the Board may conclude she 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. Nicole Vermillion waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 Nicole Vermillion 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. Nicole Vermillion 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 Nicole Vermillion and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

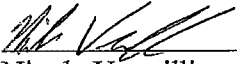
10. If the Board rejects this stipulation, or if Nicole Vermillion does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Nicole Vermillion waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Nicole Vermillion 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. Nicole Vermillion agrees to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) with \$750 suspended.

12. The civil penalty in the amount of seven hundred fifty (\$750) 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.


II. CERTIFICATION

I, Nicole Vermillion, 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.



Nicole Vermillion 23 May 17
Respondent Date

Presented by:



KATE REYNOLDS 6/6/17
Executive Director Date

III. 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;

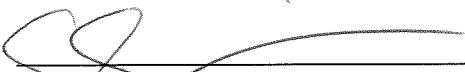
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

DATED this 14th day of July 2017



Anna Dudek Ross, Chair



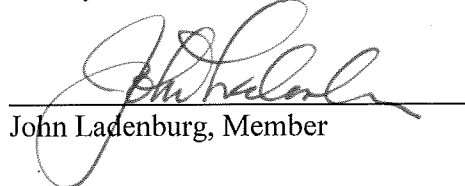
Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Shirley Battan, Member



John Ladenburg, Member

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

Nicole Vermillion, Respondent

Date