

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Timothy Nairn  
Respondent.

No. 2017-057

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, TIMOTHY NAIRN, 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 October 20, 2017 the Executive Ethics Board (Board) initiated a complaint based on a referral from the Washington State Auditor's Office (SAO) alleging that Timothy Nairn, Custodian 3 with South Puget Sound Community College (SPSCC) may have violated the Ethics in Public Service Act by using state resources for his private benefit and gain by accessing his state computer during state time to view the internet and watch online videos.

2. Mr. Nairn has been employed in state service for more than fourteen years. For all times pertinent to this investigation, Mr. Nairn was employed as a Custodian 3 working from

SPSCC's satellite campus (Mottman campus). Mr. Nairn's typical work hours were Monday-Thursday from 3:00 pm-12:00 am and Friday from 1:00 pm -9:00 pm.

3. A Custodian 3 serves as a lead custodian providing back up to the Custodial Supervisor and helping guide the work teams. Following the SAO investigation, SPSCC demoted Mr. Nairn from his lead position as a Custodian 3 to a Custodian 2.

4. The complaint indicated that custodial staff use a shared computer for business related reasons, such as checking email and reviewing work orders. The complaint alleged that Mr. Nairn was often on the computer for several hours a day surfing the internet and watching online videos.

5. Due to the shared usage of the computer and the overwriting processes, the review of Mr. Nairn's internet browsing history encompassed the period from April 2017 to July 2017. The investigation determined that Mr. Nairn spent approximately 148 hours over 52 workdays browsing non-work related Internet sites, approximately 113 hours of which were spent accessing online videos.

6. A further breakdown of Mr. Nairn's internet browsing over the review period showed:

- Videos/Music/Entertainment: 6,835 minutes.
  - News/Sports: 1,512 minutes
  - Shopping/Travel: 294 minutes
  - Other: 254 minutes.
- Total Internet browsing: 8,895 minutes (148.3 hours)

7. When confronted with the browsing history during the SAO investigation, Mr. Nairn readily admitted to the browsing history and apologized for his actions. Mr. Nairn told the SAO investigator that he works independently, is often alone and completes his work but often plays YouTube videos in order to have background noise while he is working.

8. In his written response to Board staff, Mr. Nairn apologized for his actions and indicated he is very ashamed of his behavior. He said he has always been a hardworking and conscientious employee and his poor judgement in regards to his internet usage and use of state time

has tarnished his work record. Mr. Nairn closed his response: "I would like to apologize for my unforgivable lack of good judgment in this case. I can assure you that this will never happen again. I will be the best state employee in the future."

9. Board staff spoke with Samantha Soto (Ms. Soto), Assistant Chief Human Resources Officer for SPSCC. Ms. Soto indicated that as a result of the investigation, Mr. Nairn was moved from the satellite campus to the main campus for closer supervision, was demoted from a Custodian 3 to a Custodian 2, and lost his status as a lead custodian.

10. Per Article 29 of the 2017-2019 WFSE Collective Bargaining Agreement, since Mr. Nairn's current salary exceeded the maximum salary for his new position, he continues to be compensated at his current salary of \$3,054 per month; however, he is not eligible for increments or COLA increases.

11. Ms. Soto indicated to Board staff that Mr. Nairn's previous evaluations since his hire identified him as an above average employee, who is very conscientious about his job duties.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from the use of persons, money, or property for private gain.

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. Based on the stipulated facts above, Mr. Nairn used state resources for a private benefit in violation of RCW 42.52.160.

3. 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. It is an aggravating factor that Mr. Nairn was in a lead position. It is a mitigating factor that Mr. Nairn received a letter of reprimand and demotion resulting in a loss of pay increments and COLA increases.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Timothy Nairn 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. Timothy Nairn 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. Timothy Nairn further agrees that the evidence available to the Board is such that the Board may conclude he 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. Timothy Nairn waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 Timothy Nairn 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. Timothy Nairn 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 Timothy Nairn 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 Timothy Nairn 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 Timothy Nairn 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, Timothy Nairn 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, Timothy Nairn 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. Timothy Nairn agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500) for the violations associated with RCW 42.52. The Board agrees to suspend one thousand two hundred and fifty dollars (\$1,250) on the condition that Timothy Nairn 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 non-suspended portion of the civil penalty civil penalty in the amount of one thousand two hundred and fifty dollars (\$1,250) 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, Timothy Nairn, 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.

Timothy a Nairn                      12/13/17  
Timothy Nairn                                      Date  
Respondent

Presented by:

  
KATE REYNOLDS  
Executive Director

12/21/17  
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):

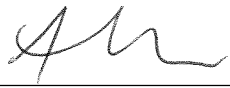
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DATED this 12<sup>th</sup> day of January, 2018

  
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John Ladenburg, Sr., Chair

  
\_\_\_\_\_  
Shirley Battan, Vice-Chair

  
\_\_\_\_\_  
Lisa Marsh, Member

  
\_\_\_\_\_  
Anna Dudek Ross, Member

  
\_\_\_\_\_  
Gerri Davis, Member

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

\_\_\_\_\_  
Timothy Nairn, Respondent                      Date