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**WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE EXECUTIVE ETHICS BOARD**

In the matter of:  
  
NANCY NELSON,  
  
Respondent.

OAH NO. 01-2019-AGO-00029  
EEB NO. 2018-014  
  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

**I. PROCEDURAL HISTORY**

1.1 On February 20, 2018, the Executive Ethics Board (Board) received a complaint referred by Western Washington University (WWU) alleging that Nancy Nelson (Ms. Nelson), Manager for WWU, may have violated the Ethics in Public Service Act by using state resources for her private benefit and gain.

1.2 On June 14, 2018, the Board found reasonable cause to believe that a violation of the Ethics Act was committed.

1.3 On July 11, 2019 the Executive Ethics Board Staff (Board Staff) and the Respondent filed Stipulated Facts and Conclusions of Law (Stipulation), resolving all issues in the case with the exception of determining the appropriate penalty, if any.

1.4 After due and proper notice, a hearing was held on the appropriate penalty in this matter. The hearing was held at the Board offices at Bristol Court in Olympia, Washington, convening on September 13, 2019. ALJ TJ Martin from the Office of Administrative Hearings conducted the proceedings, and Board Chair Shirley Battan, and members Lisa Marsh and

1 Anna Dudek Ross were present. Also present was Michelle Carr, Assistant Attorney General,  
2 legal advisor to the Board.

3 1.5 Chad C. Standifer, Assistant Attorney General for Board Staff, was present. The  
4 Board's Executive Director, Kate Reynolds, and other Board Staff members were present.

5 1.6 Ms. Nelson representing herself, pro se appeared telephonically.

6 1.7 Board Staff filed Board Staff's Penalty Brief.

7 1.8 The proceedings were recorded and open to the public.

8 1.9 The hearing was adjourned on September 13, 2019.

9 Based on the Stipulation and evidence presented, the Board enters the following  
10 Findings of Fact, Conclusions of Law, and Final Order:

## 11 II. FINDINGS OF FACT

12 2.1 Ms. Nelson was first hired by WWU on November 24, 1997, and was appointed  
13 into her current position of Program Manager on February 15, 2002. Ms. Nelson was in her  
14 current position for all times pertinent to this investigation.

15 2.2 On January 5, 2018, Laura Wellington (Ms. Wellington), Ms. Nelson's direct  
16 supervisor, reported to WWU Human Resources (HR) Department that Ms. Nelson should  
17 receive formal disciplinary action for misreporting time worked, working from home without  
18 authorization, using state resources for personal gain including outside business activities,  
19 misuse of work time, and a lack of sound judgement.

20 2.3 During an interview on August 23, 2017, with WWU HR regarding the issue  
21 above, Ms. Nelson disclosed that she had been using her state computer for personal gain,  
22 including using it for her outside business activities. Because of Ms. Nelson's disclosure of  
23 personal use HR requested WWU Internal Audit (IA) to conduct a review of Ms. Nelson's WWU  
24 computer hard drive and emails. The scope of IA's review was limited to electronic data or  
25 correspondence related to Ms. Nelson's outside business and was based on WWU Outlook  
26

1 emails and computer hard drive data for the period of 2008 to August 2017 with the majority of  
2 the activity occurring during the period of 2014-2017. See the details of the IA's finding below:

- 3 • Ms. Nelson's WWU email account contained over 300 emails related to "Cabi,"  
4 an at-home clothing company, which it appears that Ms. Nelson was affiliated  
5 with, including as an at-home party host. IA concluded that Ms. Nelson received  
6 a personal benefit for hosting at-home parties, including reduced cost for  
7 merchandise and credits depending on the amount of sales from her at-home  
8 parties. The emails contained invitations to the at-home parties, facilitating the  
9 orders of Cabi Merchandise, and communicating with the Cabi Stylist.
- 10 • Ms. Nelson's computer hard drive contained numerous documents related to her  
11 outside employment as an English instructor at Bellingham Technical College  
12 (BTC). The documents included course materials, syllabi, student assignments,  
13 and instructor evaluations.
- 14 • Ms. Nelson's computer hard drive also contained numerous documents related to  
15 her outside business as a real estate agent. Documents included photographs,  
16 marketing materials, and documents for the purchase and sale of real estate.
- 17 • In addition to using her work computer and emails for outside work activities,  
18 Ms. Nelson disclosed in the August 23 meeting that she would spend one to two  
19 hours of WWU work time to conduct activities related to her employment at BTC.

20 2.4 On September 21, 2015, Ms. Nelson was approved by WWU for outside  
21 employment to teach part-time at BTC. Ms. Nelson has regularly submitted and been approved  
22 by WWU to conduct outside employment at BTC with the last approval on January 19, 2017.

23 2.5 On February 20, 2018, WWU referred their investigation and findings to the  
24 Executive Ethics Board to determine if Ms. Nelson violated state ethics laws.

25 2.6 On February 21, 2018, Board staff requested a copy of Ms. Nelson's WWU  
26 computer hard drive and the last 24 months of her Outlook emails.

27 2.7 On March 8, 2018, Board staff made a forensic copy of the hard drive. Using  
28 Magnet Forensic, Axion 1.2 software, Board staff conducted an analysis of the hard drive and  
29 emails. See results below:

30 **CABI – Emails – January 30, 2015, through August 3, 2017**

31 Board staff's review revealed 154 emails sent/received related to Cabi; 65 sent emails  
32 and 89 received. The emails contained invitations to at-home parties, facilitating orders of Cabi

1 merchandise, and communicating with the Cabi Stylist. Ms. Nelson sent two invitations to attend  
2 a Cabi at-home party to her supervisor, Ms. Wellington, on October 20, 2016, and April 14,  
3 2017. Ms. Wellington did not respond by email. In addition to Ms. Wellington, nine other WWU  
4 employees received the invitations to attend at-home Cabi parties hosted by Ms. Nelson.

5 **CABI – Internet – July 15, 2013, through August 28, 2017**

6 Board staff reviewed Ms. Nelson’s internet history found in Internet Explorer (IE) Main  
7 History and Internet Explorer 10-11(Main History) for the period mentioned above. The review  
8 showed occasional visits to the following Cabi related websites:

- 9
- 10 • Bethshaw.cabionline.com/consultants;
  - 11 • Bethshaw.cabionline.com/shows/host-a-show;
  - 12 • Cabishowmanager.com;
  - 13 • Cabionline.com.

14 **Bellingham Technical College – July 15, 2013, through June 6, 2017**

15 Board staff’s review of Ms. Nelson’s work computer hard drive revealed over 50  
16 documents related to her outside employment at BTC.

- 17
- 18 • 51 Word documents – related to course materials, syllabi, student assignments,  
19 and instructor evaluations.
  - 20 • 3 Excel spread sheets – BTC Annual schedules and Organization chart.

21 Board staff also reviewed Ms. Nelson’s internet activity related to BTC for the period of  
22 July 15, 2013, through January 1, 2015.

23 The review showed that Ms. Nelson was using her WWU computer to access her BTC  
24 emails using the BTC Outlook Web Application (OWA). Ms. Nelson used the BTC OWA to  
25 communicate with her BTC students, BTC co-workers, and to download BTC student  
26 assignments using her WWU computer during times she was being paid by WWU.

In addition, Ms. Nelson visited BTC internet sites from her WWU computer. Some of  
the sites visited are:

- www.btc.edu
- www.btc.edu/staffmail
- www.btc.edu/General/staff/login

- 1 • www.btc.edu/CurrentStudents
- 2 • www.btc.instructure.com/login
- 3 • www.btc.instructure.com/courses

4 In an interview with WWU HR on August 23, 2017, Ms. Nelson indicated that she would  
5 spend one to two hours per week of WWU work time to conduct work related to her outside  
6 employment with BTC.

7 **Real Estate – Outside Business – October 24, 2014, through January 26, 2017**

8 Board staff's review of Ms. Nelson's computer hard drive and emails revealed the  
9 following evidence related to her outside business activities in real estate:

10 **Documents**

- 11 • 83 PDF documents – seller disclosure forms, MLS full details, inspection notices,  
12 invoices from Sterling Realty, etc.
- 13 • 2 Word documents – Credit approval and offer letter.
- 14 • 10 Excel spread sheets.
- 15 • 91 images of interiors of homes and property.

16 **Internet: August 15, 2013, through July 26, 2016**

17 Board staff reviewed Ms. Nelson's internet history found in Internet Explorer (IE) Main  
18 History and Internet Explorer 10-11(Main History) for the period mentioned above. The review  
19 showed multiple visits to the following related websites:

- 20 • www.matrix.nwmls.com
- 21 • www.nwmls.com
- 22 • http://mls.realist.com

23 2.8 In addition to the above information, Board staff identified evidence that would  
24 indicate that Ms. Nelson was using her state computer resources and time to support the  
25 Whatcom Literacy Council (WLC), an outside non-profit organization.

26 2.9 The WLC is a non-profit organization dedicated to increasing the literacy skill  
for adults living in Whatcom County. Ms. Nelson is identified on the WLC website as a Board  
member. WLC Board members are volunteer and non-paid positions.

1           2.10    A review of Ms. Nelson's WWU emails and hard drive found 105 emails related  
2 to WLC (December 6, 2016, through August 14, 2017) and 13 PDF documents related to WLC  
3 Board meeting minutes, agenda items, and policies.

4           2.11    Ms. Nelson indicated in her response to Board staff that her supervisor was aware  
5 that she was using the computer for outside business activities and she was never advised by her  
6 supervisor that she should not be using state resources for her personal benefit. Ms. Nelson  
7 further indicated that she had sent her supervisor an invitation to an at-home Cabi party and her  
8 supervisor was present at a party at her house and was never told that she should not be sending  
9 out email invitations from the WWU email system.

10          2.12    Ms. Wellington indicated in her response to Board staff that she was not aware  
11 of the extent of the personal use by Ms. Nelson until the IA investigation of her hard drive and  
12 emails but she was aware of a few instances.

13          2.13    Ms. Wellington also indicated in her response that on one occasion, in late 2015,  
14 she allowed Ms. Nelson to use the state computer to look up some houses that she was interested  
15 in looking at.

### 16   **III.    CONCLUSIONS OF LAW**

17          3.1    The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),  
18 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive  
19 branch of state government. The Board has jurisdiction over Nancy Nelson, whose actions  
20 occurred while she was a state employee. The complaint was filed in accordance with  
21 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an  
22 adjudicative proceeding was conducted pursuant to RCW 42.52.430, .500. All the required  
23 procedural notices have been provided.

24          3.2    The Ethics Act governs the conduct of state officers and employees. Under  
25 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.  
26

1 3.3 RCW 42.52.160(1) states:

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

6 3.4 Based on the above stated stipulated Findings of Fact, the Board concludes that  
7 Ms. Nelson, by a preponderance of the evidence, violated RCW 42.52.160(1) by using state  
8 resources for her personal benefit. Ms. Nelson also stipulated to having violated this statutory  
9 provision.

10 3.5 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per  
11 violation or three times the economic value of anything received or sought in violation of the  
12 Ethics Act, whichever is greater. The Board concludes that a \$4,000 penalty is appropriate for  
13 Ms. Nelson's violations of RCW 42.52.160(1). The factors discussed below support this penalty.

14 3.6 In determining the appropriate sanction, it is appropriate for the Board to review  
15 the nature of the violation, as well as the aggravating circumstances and mitigating factors set  
16 forth in WAC 292-120-030. Ms. Nelson's violations were continuing in nature and tend to  
17 significantly reduce public respect for or in state government or state government officers or  
18 employees. WAC 292-120-030(2)(a), (e). In mitigation, Ms. Nelson acknowledged violations of  
19 RCW 42.52.160(1) by entering into the Stipulation. *See* WAC 292-120-030(4)(e).

20 3.7 During the hearing, Ms. Nelson argued that her penalty should be the same as that  
21 of another former WWU employee who received a \$250 fine. However, that individual's case  
22 involved violations of RCW 42.52.070(1), not RCW 42.52.160(1). Contrary to Ms. Nelson's  
23 arguments, a \$4,000 penalty is consistent with penalties imposed by the Board in similar cases.  
24 For example, in Case No. 2017-076, an Everett Community College employee violated RCW  
25 42.52.160(1) by using state resources for her private business as a proctor for standardized  
26 college and professional school admissions and professional licensing tests. A \$4,000 penalty  
was imposed by the Board, with \$2,000 suspended based on the Respondent's future compliance

1 with the Ethics Act. In Case No. 2017-005, the former Dean and Professor of Pediatric Dentistry  
2 at the University of Washington School of Dentistry violated RCW 42.52.160(1) when he used  
3 state resources for his private benefit and gain by using state resources for his outside business  
4 interests. A \$6,000 penalty was imposed, with \$2,000 suspended based on the Respondent's  
5 future compliance with the Ethics Act. Similar to the Respondents in those matters, Ms. Nelson  
6 consistently used her state computer to support her outside interests.

7 3.8 While a portion of the penalty was suspended in both of the above-referenced  
8 matters, both involved settlements agreed to by the parties and approved by the Board. In  
9 addition, this matter appears to involve more egregious conduct by the Respondent. This includes  
10 Ms. Nelson's admission that she spent one to two hours of work time per week on her BCU  
11 outside employment. No suspension of the penalty is warranted here.

#### 12 IV. FINAL ORDER

13 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby  
14 ordered that Nancy Nelson is assessed a total monetary civil penalty of \$4,000 based on her  
15 violations of RCW 42.52.160(1).

16 4.2 The total amount of \$4,000 is payable in full within 90 days of the effective date  
17 of this order.

18 DATED this 10<sup>th</sup> day of October 2019.

19 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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22 Shirley Battan, 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;
- 26

- 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.