

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Melanie Nelson

Respondent.

No. 2020-028

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, MELANIE NELSON, 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 April 23, 2020, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that Melanie Nelson (Ms. Nelson), Community Corrections Officer 3, with the Department of Corrections (DOC), may have violated the Ethics in Public Service Act by using state resources for her private benefit and gain.

2. Ms. Nelson has worked for DOC since June 2015. In April 2018, she was appointed into her current position as Community Corrections Officer 3. Ms. Nelson was in that position for all time pertinent to this investigation.

3. In August 2018, the SAO Whistleblower program received a complaint alleging that Ms. Nelson was spending an excessive amount of time on her work computer doing personal research as she studied for her LSAT (Law School Admissions Test) and other matters not related to her DOC position. In addition, her time spent researching for the LSAT had directly affected her work performance causing other staff to complete her work and unnecessary overtime.

4. The SAO reviewed Ms. Nelson's emails and internet history for the period of January 2, 2019 through August 14, 2019. In addition, the SAO reviewed Ms. Nelson's DOC computer hard drive for evidence of personal use.

5. The SAO's review of Ms. Nelson's emails, internet history, and computer hard drive for the period of January 2 through August 14, 2019 revealed the following information:

- A total of 2,887 minutes or 48.1 hours of internet activity considered to be non-work related.
 - 350 separate instances of non-work related internet browsing activity. Of the 350 instance 87 lasted longer than 10 minutes.
 - The SAO investigation identified 687 or 11.4 hours of internet activity related to Ms. Nelson's preparation for the LSAT and applying for law school.
 - 780 minutes or 13 hours of internet activity related to personal travel.
 - 83 minutes of internet activity related to Ms. Nelson seeking employment with non-state government agencies.
 - The remaining 1,338 or 22.3 hours of internet activity involved browsing various sites related to retail, entertainment, and online banking.

6. The SAO's review of Ms. Nelson's computer hard drive revealed the following personal documents:

- Law school resume and personal statement. These two document were attached to an email sent from Ms. Nelson's state email address to a personal email address, indicating that Ms. Nelson spent state time to write and/or edit these documents using her state issued computer. Last modified by Ms. Nelson from her DOC computer on 9/21/2018 at 1:54 pm.
- A 2019-2020 Seattle University Out-Of-Pocket worksheet.
- Seattle University School of Law 2019-2020 Academic Calendar.

7. Joan Cook (Ms. Cook), Community Corrections Supervisor, and Ms. Nelson's direct supervisor for all time pertinent to this investigation, indicated in her response to Board staff that Ms. Nelson was consistently current and up-to-date on her work and daily tasks. Ms. Cook further indicated that she had not received complaints indicating that Ms. Nelson was behind on her work and that she has never received any report of others having to perform Ms. Nelson's work or tasks.

8. Ms. Cook indicated in her response that others in the office might spend their breaks and lunches chit-chatting, on their phones, watching videos, listening to podcasts, smoking, going for walks and all sorts of other things. Ms. Nelson would spend her spare time studying for the LSAT. Therefore, it would not be unusual for someone to observe her studying while at her desk on her breaks or lunch period.

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. Based on the stipulated facts above, Ms. Nelson used state resources for a personal 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. In the matter at hand, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Melanie Nelson 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. Melanie Nelson 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. Melanie Nelson 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. Melanie Nelson 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 Melanie Nelson 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. Melanie Nelson 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 Melanie Nelson 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 Melanie Nelson 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 Melanie Nelson 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, Melanie Nelson 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, Melanie Nelson 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. Melanie Nelson agrees to pay a civil penalty in the amount of three thousand, five hundred dollars (\$3,500) associated with violations of, RCW 42.52. The Board agrees to suspend one thousand dollars (\$1,000) on the condition that Melanie Nelson 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 civil penalty in the amount of two thousand, five hundred dollars (\$2,500) 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.

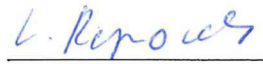
I. CERTIFICATION

I, Melanie Nelson, 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.



MELANIE NELSON
Respondent
12.22.2020
Date

Presented by:



KATE REYNOLDS
Executive Director
1/8/2021
Date

II. 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 8th day of January, 2021

Approved via Virtual Meeting

Shirley Battan, Chair

Approved via Virtual Meeting

Gerri Davis, Vice-Chair

Voting Against via Virtual Meeting

Lisa Marsh, Member

Approved via Virtual Meeting

Anna Dudek Ross, Member

Approved via Virtual Meeting

Jan Jutte, Member

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

Melanie Nelson, Respondent Date