

1                                   **BEFORE THE WASHINGTON STATE**  
2                                   **EXECUTIVE ETHICS BOARD**

3       In the Matter of:

EEB Case No. 2022-001

4       Nathan Ank,

FINAL ORDER

5                                   Respondent  
6

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8                                   **I. PROCEDURAL HISTORY**

9               On July 8, 2022, the Executive Ethics Board (Board) found reasonable cause to believe  
10       that the Respondent, Nathan Ank (Mr. Ank)) violated the Ethics in Public Service Act while  
11       employed as a Corrections/Custody Officer 3 (CO3) with the Department of Corrections  
12       (DOC). Notice of the Reasonable Cause Determination and the right to request a hearing was  
13       served upon Mr. Ank by regular mail and certified mail on July 11, 2022. Mr. Ank failed to  
14       respond to the Reasonable Cause Determination within 30 days as required by WAC 292-100-  
15       060(2).

16               The Board entered an Order of Default on September 9, 2022. On September 12, 2022,  
17       Board staff provided Mr. Ank with notice of the Board's Order of Default by regular and  
18       certified mail.

19               Pursuant to WAC 292-100-060(4), Mr. Ank was allowed 10 days to request vacation of  
20       the Order of Default. Mr. Ank has not moved to vacate the order entered on September 9,  
21       2022.

22                                   **II. FINDINGS OF FACT**

23               1.       According to the DOC, Mr. Ank was originally hired by the DOC as a CO on  
24       July 1, 2004. He was promoted to CO3 (Corrections Sergeant) on April 16, 2015 which is the  
25       position he presently holds.  
26

1           2.       According to the SAO, they received a Whistleblower complaint alleging that  
2 Mr. Ank used state resources for personal or private gain by not submitting leave for all of his  
3 absences from work. Additionally, it was alleged that his supervisor, Lieutenant Daniel Wistie  
4 (Mr. Wistie), granted Mr. Ank special privilege by not holding Mr. Ank accountable for his  
5 time and attendance.

6           3.       According to the State Auditor's Office (SAO), they found reasonable cause to  
7 believe that Mr. Ank may have used state resources for personal or private gain but found  
8 nothing to support that Mr. Wistie granted Mr. Ank special privileges by not holding Mr. Ank  
9 accountable for his time and attendance.

10          4.       According to the SAO, although Ms. Wistie does not approve Mr. Ank's time  
11 card, it is the responsibility of Mr. Wistie to ensure Mr. Ank is showing up to work and  
12 fulfilling his shift. The SAO states that they found that the DOC process allows for Mr. Wistie  
13 to input leave into the roster for staff if they are not available for their shift.

14          5.       According to the SAO, their investigation found that it was not uncommon for  
15 staff to work their shift, and not be physically seen by other staff. Additionally, the SAO states  
16 that they found that the DOC does not have a formal "clock-in, clock-out" system to clearly  
17 document staff time worked. According to the SAO, DOC policies do not specifically outline  
18 procedures to ensure staff time worked is properly documented.

19          6.       According to the SAO, to determine whether Mr. Ank was at work, they  
20 requested the following information from DOC for the period of January 13, 2020 through  
21 January 13, 2021:<sup>1</sup>

- 22           • The Automated Time and Labor Scheduling (ATLAS) daily roster, which  
            shows employee assigned schedules and shifts.
- 23           • Leave slips and reports to show leave used.
- 24           • Keywatcher reports, which demonstrate whether an individual assigned the  
            keys physically checked-in or checked-out at the facility. According to the

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25           <sup>1</sup> According to the SAO they do not keep their supporting documents. Board staff requested and received  
26 the documents reviewed by the SAO from the DOC for the same time period to review the SAO's findings.

1 SAO, they obtained and reviewed the Keywatcher reports for each set of keys  
2 Mr. Ank was assigned, Key #38, #25, #49 and #157. They confirmed with Mr.  
3 Ank that those four keys were the only keys he was assigned.<sup>2</sup>

- 4 • Armory monthly packets, which contain access times and dates when entering  
5 the armory/weapons facility and includes the facility Tower Logs. According to  
6 the SAO they confirmed with Mr. Ank that any person entering or exiting the  
7 Armory will sign in or out, and there are no exceptions to this requirement.
- 8 • COVID-19 screening logs, which show temperature checks prior to starting a  
9 shift, as required due to the pandemic.
- 10 • Email correspondence sent during shifts.

11 7. According to the SAO, their review of the ATLAS roster found that Mr. Ank  
12 was assigned 263 shifts, for a total of 2,104 hours. According to the SAO, the DOC uses the  
13 ATLAS time keeping program to track employee's shifts. An ATLAS Daily Roster is used to  
14 assign employees the post number, job, time of the shift, leave and relief owner (a person  
15 covering another's shift/post.) According to the SAO, the ATLAS time keeping system  
16 interfaces with HRMS and should accurately reflect Mr. Ank's assignments. However, other  
17 users can make changes to ATLAS and it is possible that an out of the ordinary situation could  
18 cause ATLAS to be incorrect.<sup>3</sup>

19 8. According to the SAO, a review of Mr. Ank's leave use for the period of  
20 January 13, 2020 through January 13, 2021 found that he used leave for 103 days, or 742  
21 hours, inclusive of days when partial leave was used.

22 9. According to the SAO, they were unable to show that Mr. Ank was in  
23 attendance at work for 11 days (or 88 hours) as there was no Keywatcher, COVID-19  
24 screening, or Armory Access activity for these days.

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25 <sup>2</sup> According to the SAO, they were advised by the DOC that if the user's name appears on the report, they  
26 were physically present to check in/check out keys. However, it is a common practice at the DOC that one person  
may return (check-in) multiple sets of keys, so the lack of the name does not necessarily mean the employee was  
not present.

<sup>3</sup> According to the SAO, they compared the ATLAS Daily Roster to the HRMS leave documents to  
ensure they could rely on the ATLAS Daily Roster. They did not see any discrepancies with this during their  
review.



1           10.     According to the SAO, when advised of the 11 days that were unaccounted for,  
2 Mr. Ank said that if leave was not used, then he was in attendance at work.

3           11.     According to the SAO, Mr. Ank was asked why a COVID screening was not  
4 completed on these days, he explained that he often does not enter the facilities so does not get  
5 screened. He added that he has had instances where he was screened but the screener did not  
6 know him, so did not write it down.

7           12.     According to the SAO, Mr. Ank forwarded various emails to demonstrate he  
8 was at work for the days in question. Mr. Ank confirmed that he would not receive or answer  
9 emails when not on shift (excluding standby days.) According to the SAO, they reviewed the  
10 emails provided by Mr. Ank and were able to confirm that he was “more likely than not,  
11 working on seven of the eleven days, leaving four days unsubstantiated.”

12           13.     According to the SAO, Mr. Ank failed to meet the deadline to provide  
13 additional evidence that he was working on the four days in question.

14           14.     Board staff were provided with the spreadsheet created by the SAO listing the  
15 dates and times reviewed and listed the documentation used to show that Mr. Ank was on duty  
16 when assigned. Board staff also reviewed documentation provided by the DOC for the four  
17 days in question and confirmed that there was no evidence that Mr. Ank worked on the  
18 following days:

- 19                 • May 29, 2020
- 20                 • June 29, 2020
- 21                 • July 24, 2020
- September 21, 2020

22           15.     Board staff contacted Mr. Ank’s previous supervisor, Mr. Wistie and asked him  
23 if there was any reason that he can think of that would explain why all of the WCC records  
24 provided to the SAO and the Board by the DOC showed no evidence Mr. Ank worked the four  
25 days in question. In a written response Mr. Wistie said “Most likely he forgot to turn in his  
26 leave slips and was not present.”

16. Board staff sent Mr. Ank a notification letter on January 11, 2022. After not receiving a response, Board staff were able to get into contact with Mr. Ank after speaking with his supervisors on June 7, 2022. Mr. Ank agreed to provide a written response. Mr. Ank has not responded to Board staff regarding the allegations.

17. Board staff were advised by DOC that the total wages Mr. Ank received for the four days that he did not work was \$1,058.72.

### III. CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW, with respect to employees in the executive branch of state government. The Board has jurisdiction over Nathan Ank, whose actions occurred while he was a state employee. Based on the evidence reviewed, Mr. Ank has used state resources (time) for his private benefit or gain in violation of RCW 42.52.160. Mr. Ank's activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

2. RCW 42.52.160(1) – Use of persons, money, or property for private gain, 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.

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

(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis 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 state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;

(vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and  
(vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

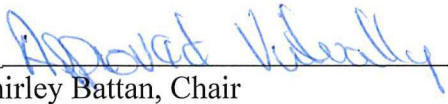
4. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 have been reviewed.

#### IV. FINAL ORDER

Based on the foregoing:


IT IS HEREBY ORDERED Respondent Nathan Ank is liable for and shall pay a civil penalty of two-thousand-two-hundred and fifty dollars (\$2,250). The payment shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

DATED this 13th day of January 2023.

  
Shirley Battan, Chair

  
Jan Jutte, Vice Chair

  
Gerri Davis, Member

  
Earl Key, Member

  
Kelli Hooke, Member



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  
5 request 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,  
25 summary, or brief description of the agency action;  
26

- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led  
2 to 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 34.05.545.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board.  
9 The 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.