



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112  
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC CASE NO: 12-122
WITH RCW 42.17	)	
	)	
Mark Nelson	)	
	)	REPORT OF INVESTIGATION
	)	
Respondent.	)	
_____	)	

I.

**Background**

- 1.1 Mark Nelson was appointed Cowlitz County Sheriff on October 1, 2009. On October 16, 2009, Sheriff Nelson timely filed a Personal Financial Affairs Statement (F-1 report), and checked the box after the questions in section 5 indicating that he had read and was familiar with RCW 42.17.130 regarding the use of public facilities in election campaigns.
- 1.2 On February 13, 2010, Sheriff Nelson filed a Candidate Registration (C-1 report) declaring his candidacy for Cowlitz County Sheriff in the November 2010 general election. He won the election and is currently the incumbent Cowlitz County Sheriff.
- 1.3 On April 8, 2011, Sheriff Nelson filed his annual F-1 report as an elected official, and again indicated that he had read and was familiar with RCW 42.17.130 regarding the use of public facilities in election campaigns.
- 1.4 On August 30, 2011, Sheriff Nelson participated in the taping of a video in which he spoke against Initiative 1183 (I-1183), a statewide initiative concerning public retail sales of liquor, beer, wine, and spirits.

**II. Allegations**

- 2.1 On September 21, 2011, Phil Barberg filed a complaint with the Public Disclosure Commission (PDC) alleging that Protect Our Communities (also known as the No on 1183 campaign or as No on I-1183) had violated RCW 42.17.130 in recent television advertisements by sponsoring ads featuring public

officials and employees, specifically a county sheriff and an employee of a police department, *“wearing their public uniforms and using public police vehicles (with blue lights) in the background.”* Mr. Barberg alleged that the uniforms and vehicles were paid for with public funds and should not have been used to promote an opinion on an initiative. **(Exhibit 1)**

After an initial review, PDC staff asked Mr. Barberg to amend his complaint to direct his allegations toward the actions of the two individuals featured in the ads. Mr. Barberg had mistakenly listed himself as the “Respondent” on the complaint form.

- 2.2 On October 10, 2011, Mr. Barberg re-submitted his complaint alleging that two individuals, Mark Nelson, Cowlitz County Sheriff, and Bob Heuer, City of Castle Rock Police Chief, had violated RCW 42.17.130 by using the public facilities of their respective agencies, including uniforms, equipment, and vehicles, to oppose I-1183. **(Exhibit 2)**

### III. Findings

- 3.1 On or around October 12, 2011, PDC staff visited the Protect Our Communities (No on I-1183 campaign) website, protectourcommunities.com, and reviewed a video posted to the website, as described below. Also, on or around October 12, 2011, PDC staff visited the website, youtube.com, and reviewed the same video. The video included images of Mark Nelson, Cowlitz County Sheriff, making statements in opposition to I-1183.
- 3.2 On January 12, 2012, Beth Shugert with Argo Strategies stated that the video featuring Sheriff Nelson and Chief Heuer was part of a package of videos produced for Protect Our Communities that aired statewide on several television stations. In the Seattle area, the ads aired from September 6, 2011 through September 26, 2011. In the Spokane and Yakima areas, the ads aired from September 27, 2011 through October 2, 2011.
- 3.3 The video showed Sheriff Nelson wearing what appeared to be a Cowlitz County Sheriff’s uniform jacket with a cloth name plate affixed on the right side, and a badge attached to the left side. He was standing in front of a gray, unmarked, patrol vehicle that was displaying flashing red and blue dash and grill lights. **(Exhibit 3)**
- 3.4 The video was 31 seconds in length. Sheriff Nelson appeared for the first six seconds, and stated, *“Alcohol kills more kids than any other drug. That’s why we urge you to vote no on Initiative 1183.”* Sheriff Nelson appeared again for four seconds, half-way through the video, saying, *“And problem drinking could increase as much as 48 percent.”*
- 3.5 PDC staff described this video to Mr. Barberg, who confirmed that it is the video/ad he referred to in his complaint. Mr. Barberg stated that he viewed the ad on one of the Seattle television stations.

- 3.6 On October 26, 2011, Sheriff Nelson submitted a response to the complaint. **(Exhibit 4)** On November 1, 2011, PDC staff interviewed Sheriff Nelson under oath.
- 3.7 Sheriff Nelson stated that he is a former Drug Abuse Resistance Education (DARE) officer. He said he believes any increase in alcohol sales also increases the accessibility of alcohol to minors. He stated that David Grumboyd, an individual from Cowlitz County who was active in the 2010 liquor privatization initiative, was also active with the No on I-1183 campaign, and asked him to appear in a political advertising video opposing I-1183. Sheriff Nelson said Mr. Grumboyd arranged for him to appear in the video/ad, and informed him that the production company was going to be in the Cowlitz County area in mid-August. Sheriff Nelson agreed to appear in the political advertising video opposing I-1183.
- 3.8 Sheriff Nelson said he participated in the videotaping on August 30, 2011. He said the production company initially wanted to tape the video at the Cowlitz County jail or some other recognizable law enforcement facility. At Sheriff Nelson's suggestion, the video was taped in front of the Castle Rock cemetery, which is an area accessible to the public.

#### **Alleged Use of Cowlitz County Uniform and Equipment in Political Ad**

- 3.9 During an interview on November 1, 2011, Sheriff Nelson said, *"There was a question about the uniform, and I told them that I was not going to wear a uniform."* He said the production company told him all they were interested in was to have him be identified in some way as a law enforcement officer.
- 3.10 Sheriff Nelson appeared in the political advertising video in plain clothes, wearing a Cowlitz County Sheriff's uniform jacket. He stated the jacket worn in the ad was his personal property even though he originally purchased it with Cowlitz County Sheriff's uniform allowance funds.
- 3.11 Sheriff Nelson said he considered the jacket to be his personal property because the Cowlitz County Sheriff's Office follows its collective bargaining agreement with the Sheriff Deputies and Sergeants Guild, which states in Article 10.9 that at the time of separation from the Sheriff's Office, an employee shall return to the Sheriff all identifying uniforms and equipment, except footwear, purchased in the last 18 months prior to separation. He said he considers identifying uniforms and equipment that are more than 18 months old to be the personal property of the employee. **(Exhibit 5)**
- 3.12 Sheriff Nelson stated that he obtained the jacket worn in the political ad sometime before his October 2009 appointment as Cowlitz County Sheriff, when he was a Cowlitz County Sheriff's Captain. He said he had worn the jacket for approximately two years before the ad was taped. He stated that, as Sheriff, he allows Cowlitz County officers to wear these jackets whether in uniform, when on duty, or out of uniform, when off-duty.

- 3.13 Sheriff Nelson stated that during his law enforcement career, he has acquired several law enforcement badges. On October 26, 2011, Sheriff Nelson submitted a photograph showing nine of the law enforcement badges he has collected during his career. **(Exhibit 6)**
- 3.14 Sheriff Nelson stated that he brought several of his badges to the videotaping of the political advertisement. He said that the badge worn on the uniform jacket seen in the political ad was his personal property and part of his collection of badges. He said he carries selected badges from his collection to use when he is both on and off duty, and said many of the badges belonged to his father, a former Cowlitz County Sheriff. He said the badge on the uniform jacket worn to tape the ad was a badge given to him when he was interim Cowlitz County Sheriff, and is part of his personal collection.
- 3.15 Sheriff Nelson stated that the Cowlitz County Sheriff's uniform jacket worn in the political ad does not include any words or emblems visible in the advertisement. He said there are no distinguishing patches, badges or other identifiable insignia appearing on the clothing that can be attributed to the Cowlitz County Sheriff's Department. He also stated that no words or distinguishing characteristics can be identified by looking at the badge.
- 3.16 PDC staff reviewed the video and determined that the badge worn by Sheriff Nelson in the political ad is not identifiable to the viewer as belonging to a specific law enforcement agency. Sheriff Nelson stated that the badge worn in the ad is not the current official badge of the Cowlitz County Sheriff's office.
- 3.17 Sheriff Nelson stated that prior to taping the political ad, he signed out as "off-duty" with Cowlitz County Dispatch using his mobile computer network installed in his patrol vehicle. He stated that he used personal time for taping the political advertisement.

#### **Alleged Use of Cowlitz County Patrol Vehicle in Political Ad**

- 3.18 Sheriff Nelson's Cowlitz County patrol vehicle was featured in the background of the segment of the political ad that included him. While the vehicle has no identifiable Cowlitz County markings, it is equipped with emergency red and blue flashing dash and grill lights. The lights were activated during the taping of the political advertisement/video.
- 3.19 Sheriff Nelson said he suggested to the production company that they use the local cemetery as a background scene for the video. The local producers said they liked that idea, and set up their cameras using the cemetery as the background. Sheriff Nelson's car was parked nearby, behind the cameras, on a gravel road. The on-scene crew was coordinating with, and sending video to, an off-site director. The off-site director did not like the cemetery as a background, so the camera crew re-positioned the camera to show the patrol car in the background. The on-site director asked Sheriff Nelson to turn on the emergency lights of his Cowlitz County vehicle, which he did.

- 3.20 Sheriff Nelson said he was initially apprehensive about using the patrol vehicle in the political advertisement. Sheriff Nelson said he agreed to use the Cowlitz County patrol vehicle in the background of the ad because it was his understanding that, so long as Cowlitz County was not identified on the vehicle, he was not violating any law or rule.
- 3.21 Sheriff Nelson said he accepts full responsibility for authorizing the use of his Cowlitz County Sheriff's vehicle in the advertisement opposing I-1183. He also stated that he believed the production company producing the ad should have known the rules, since they had previously videotaped a segment of the ad in which City of Renton Fire Department firefighters appeared in union IAFF T-shirts and were featured in a private ambulance that was rented.

### **Summary**

- 3.22 Cowlitz County Sheriff Mark Nelson acknowledges that he participated in the taping of a video that was used as political advertising to oppose I-1183. Sheriff Nelson wore a uniform jacket that had been purchased with Cowlitz County funds; however, Sheriff Nelson considered the jacket to be his personal property because it was over 18 months old. He wore a personal badge on the jacket during taping of the ad, and signed out as "off duty" before the ad was taped. He used his Cowlitz County patrol vehicle, with its emergency lights operating, as a background scene for a portion of the ad.

## **IV. Scope**

- 4.1 Staff reviewed the complaint, and the video link, received from Phil Barberg on September 21, 2011, and on October 10, 2011.
- 4.2 Staff spoke with Sheriff Mark Nelson by telephone.
- 4.3 Staff spoke with Bob Heuer, Chief of Police for Castle Rock Police Department.
- 4.4 Staff reviewed Sheriff Nelson's written response received by PDC Staff on October 26, 2011.
- 4.5 Staff interviewed Sheriff Nelson on November 1, 2011.
- 4.6 Staff spoke with Frank Randolph, Castle Rock City Attorney on January 25, 2012

**V.**  
**Law**

- 5.1 RCW 42.17.130 states: "No elective official nor any employee of his [or her] office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency."

Respectfully submitted this 9<sup>th</sup> day of February 2012.

  
Randall Unruh  
Political Finance Specialist

**List of Exhibits**

- Exhibit 1** Complaint filed by Phil Barberg on September 21, 2011
- Exhibit 2** Amended complaint filed by Phil Barberg on October 10, 2011.
- Exhibit 3** A screen shot of the Protect Our Communities No I-1183 video as it appears on the website, protectourcommunities.com, and as uploaded to YouTube.
- Exhibit 4** Response letter from Mark Nelson dated October 26, 2011.
- Exhibit 5** Page 14 of the 2009-2011 Collective Bargaining Agreement between Cowlitz County and Sheriff Deputies/Sergeants Guild.
- Exhibit 6** Photograph of partial badge collection of Sheriff Nelson.