

16 September, 2015

Mr. Troy Bruner, Chair  
City of Spokane Ethics Committee

Re: Motion to dismiss in the case of Ethics complaint against Councilman Mike Fagan

Mr. Bruner,

I respectfully make a motion that the complaint against me be dismissed at this time as both the proceedings and the complaint fail to comply with the required policy and procedure as outlined below;

1. Per SMC 1.04A.110C, and Ethics committee policy and procedure, Rule 2.1, CM Snyder failed to submit his complaint using an approved form bearing the required sworn affidavit. The Ethics committee policy states: *"Complaints and inquiries **must be in writing on a form approved by the Ethics commission. The form shall contain a statement that must be signed and which states that, to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint or inquiry is true. The complaint must describe the facts that constitute the violation of this code of Ethics in sufficient detail so that the commission and the person who is the subject of the complaint or inquiry can reasonably be expected to understand the nature of any offense that is being alleged.**"* (Emphasis added)

CM Snyder's complaint was not on the required form, nor did his complaint contain the mandatory language that, "to the best of the person's knowledge, information, and belief formed after reasonable reflection, the information in the complaint or inquiry is [was] true. Therefore, the complaint should be dismissed because it does not comply with the mandatory requirements of either the SMC or the Ethics committee policy. The proceedings up to this point have not followed either document. Example; Ethics committee policy and procedure manual, Rule 2.5.

2. There are inconsistencies between SMC 1.04A and the Ethics committee policy and procedure manual that would prevent me from gaining reasonable expectation to understand the nature of any offenses that are being alleged, therefore deprive me of my due process rights. Example; Ethics committee policy and procedure manual, Rule 2.4 (3). The reference provided in that Rule no longer exists in the SMC. Re; SMC 1.04.040 G 3.
3. CM Snyder has not provided a copy of the legal memorandum that he alleges I disclosed to the public. SMC Section 01.04.04A (based on Ordinance C35148 Section 1) at subsection C. states that all hearings of the Ethics Commission must be held in compliance with the public disclosure laws, chapter 42.56. This section says:

*"The records of the hearings, as well as all documents submitted in regards to the complaint and the Ethics Commission's investigation, shall be subject to public disclosure laws, chapter 42.56 RCW – Public Records Act*

4. CM Snyder is attempting to make the attorney-client memo, which he alleges I made public, a confidential document that should be reviewed in private by the Ethics Committee. To do so would violate Section C. of SMC 01.04A.090.

For these reasons, I am moving to dismiss the complaint filed against me by CM Snyder. Should the Ethics committee deny my motion to dismiss based on my points as outlined above, I would respectfully request clarification and full understanding of the timelines required and/or granted between those documents so that I have sufficient time to prepare required responses. The Committee's rules state that I have the right to respond in writing, but that I have to do so ten days before the hearing. I do want to file a written response, but since the Committee does not have a copy of the legal opinion that I am supposed to have disclosed, and I do not know if the Committee will receive a copy of it, I need to have the hearing set so that I have enough time to submit my response in writing ten days before the hearing. This should give me time to put my arguments and facts in writing.

Thank you for your consideration of the motion.

A handwritten signature in black ink, appearing to read "Mike Fagan", with a long horizontal flourish extending to the right.

Mike Fagan, Councilman  
Spokane City Council