

CITY OF SPOKANE ETHICS COMMISSION

**IN RE: ETHICS COMMISSION
COMPLAINTS OF :**

**MOTION FOR DISMISSAL OF
COMPLAINTS**

**JAMIE PENDLETON (11/30/2015)
ALEXANDER J. SHOGAN, JR.
(12/02/2015)
MARA SPITZER (12/8/2015)**

vs.

**DAVID CONDON, MAYOR OF THE
CITY OF SPOKANE,**

Respondent.

COMES NOW the respondent David Condon, Mayor of the City of Spokane, by and through his undersigned attorney, and pursuant to Spokane Municipal Code Section 01.04A.110 (D), offers the following statement regarding jurisdiction of the Ethics Commission over the above-captioned Ethics Complaints.

1. PENDLETON COMPLAINT

The Pendleton Complaint was filed on or about November 30, 2015.

It is the position of the respondent that the Ethics Commission lacks jurisdiction concerning the Pendleton Complaint. The complainant alleges a violation of SMC

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1 01.04A.030(N), the evidence cited by the complainant in support of that complaint is a statement
2 allegedly made by Mayor Condon on or about September 22, 2015, to-wit:

3 "The issue that you speak of, there has been no official filings of anything."
4

5 Without admitting or conceding the specific accuracy of the quoted "evidence," it is
6 undisputed that no complaints of sexual harassment had been filed or have been filed to date
7 against former Chief of Police Frank Straub by anyone. Therefore, the quote attributed to Mayor
8 Condon was and is absolutely true.
9

10 Accordingly, on the basis of the cited evidence, the alleged conduct does not constitute a
11 violation of SMC 01.04A.030(N) and the matter should be dismissed pursuant to SMC
12 01.04A.110 (D)(1)(b).
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14 **II. SHOGAN COMPLAINT**

15 The Shogan Complaint and Amended Complaint lodged by a former President of the
16 Spokane City Council and a political foe of Mayor Condon alleges a violation of Section N of
17 SMC 01.04A.030. The Complainant's manifestly inadequate understanding of the facts and
18 circumstances involving the Cotton issue together with Complainant's conflation of the unique
19 facts and circumstances of the Cotton issue with a remote, factually dissimilar, and completely
20 unrelated personnel action involving another employee in 2013, regarding which the
21 Complainant has failed to conduct any appropriate good faith inquiry or investigation, renders
22 the Complaint subject to dismissal pursuant to SMC 01.04A.110(D)(1)(d) as being a complaint
23 which is frivolous and/or brought for purposes of harassment.
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27 Accordingly, should a hearing proceed in this matter, Respondent will request a report
28 and findings concerning the Complainant that he has knowingly filed a false and frivolous
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1 Complaint which is groundless and is brought for the purposes of harassment pursuant to SMC
2 01.04A.110(D)(1)(d)

3 **III. SPITZER COMPLAINT**

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5 The Spitzer Complaint was filed on or about December 8, 2015. The Spitzer Complaint
6 alleges a violation of SMC 01.04A.020(A) and (N).

7 The allegations concerning a violation of Section A of SMC 01.04A.030 should be
8 dismissed. The alleged conflict, of interest withholding information “pertinent to voters” and
9 therefore “an action” adverse to the interests of the City fails to state a claim under Section A
10 that affords the Ethics Commission jurisdiction.
11

12 Section A reads as follows:
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14 “In order to avoid becoming involved or implicated in a conflict of interest or
15 impropriety or an appearance of conflict of interest or impropriety, no current
16 City officer or employee shall have an interest, financial or otherwise, direct or
17 indirect, or engage in a business or transaction or professional activity, or incur
18 an obligation of any nature, that might be seen as conflicting with the City Officer
19 or Employee’s proper discharge of his or her official duties, the conduct of
official City business or is adverse to the interest of the City. Performance of a
legally required duty by a City officer or employee shall not be considered a
violation of the Code of Ethics.”

20 First, the cited section, as applied to the alleged facts, is impermissibly void, nebulous
21 and fatally subjective. A prohibited “conflict of interest” is conduct that “might be seen as
22 conflicting” with the proper discharge of official duties. Alternatively, a conflict of interest is
23 something that “might be seen” as adverse to the interests of the City. Alternatively, a prohibited
24 conflict of interest is something that “might be seen” as “conflicting” with the conduct of official
25 City business.
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1 As alleged in this Complaint, no “transaction” was consummated.
2 The City did not incur any “obligation” as a consequence of Mayor Condon’s truthful statement
3 on September 22, 2015, that there had been no complaint filed against former Chief of Police
4 Frank Straub alleging sexual harassment. The inherently vague and subjective standard within
5 Section A, “might be seen,” provides no parameters or guidelines as to what “might be seen”
6 means. “Might be seen” by whom?
7

8 By way of example, it, “might it be seen” that members of the Ethics Commission who
9 voted for Mayor Condon in the last general election have an impermissible conflict in that they
10 are engaging in professional activity that “might be seen” as conflicting with the proper discharge
11 of their official duties. Alternatively, members of the Ethics Commission who voted for Mayor
12 Condon’s opponent or who wrote in the name of another candidate in the last general election
13 may have engaged in conduct or have created an appearance of impropriety that “might be seen”
14 as conflicting with the proper discharge of the duties of a member of the Ethics Commission.
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17 It “might be seen” as an appearance of impropriety or an impermissible conflict that an
18 Ethics Commission member addressing the Shogan complaint would have a conflicting interest
19 if that member was a political supporter or a political adversary of Mr. Shogan during his tenure
20 on the City Council or as City Council President. In sum, “might be seen” is impossibly
21 subjective, not capable of a reasonable and objective definition or standard, and is a fatally flawed
22 template to use as a measure for official conduct, whether that conduct is by way of action or
23 omission.
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27 The conflict of interest provision is likewise hopelessly circular. A conflict of interest or
28 appearance of impropriety is virtually any action or inaction that “might be seen” by someone as
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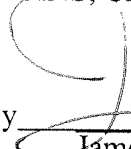
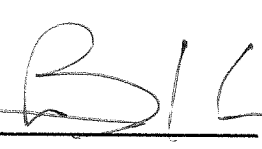
1 “conflicting.” To define a conflict as anything that might be seen as conflicting provides not
2 standard, no measure, and no gauge that is objective and demonstrable against which to measure
3 the conduct of City employees or City officials. The “might be seen as conflicting” language is
4 inherently subject to speculation, political cant and endless retrospective conjecture. For this
5 reason, as well, the cited section cannot be permitted to regulate or permit the sanctioning of
6 public conduct of an elected official.
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8 The allegations concerning a violation of Section A of SMC 01.04A.020 are likewise
9 subject to dismissal because the section threatens *post hoc* sanctions or censorship directed or
10 against political activity and public speech. This is impermissible under both the Washington
11 State Constitution and the Constitution of the United States because of its chilling effects on
12 fundamentally political public activity and the right of free and unfettered speech in the public
13 arena. Complainant’s Section A charges are therefore subject to dismissal under Section
14 01.04A.110(D)(1)(a).
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17 Complainant’s Complaint allegations of violation of Section N is likewise subject to
18 dismissal. The cited remark attributed to Mayor Condon, that there had been no official filing of
19 a sexual harassment complaint against former Chief of Police Frank Straub, was and is absolutely
20 true. Based on the analysis regarding the Pendleton Complaint, which is incorporated herein by
21 this reference, complainant’s Section N Complaint is subject to dismissal under SMC
22 01.04A.110(D)(1)(b).
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1 DATED at Spokane, Washington this 29 day of December, 2015.

2 EVANS, CRAVEN & LACKIE, P.S.

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4 By  
5 James B. King, WSBA #8723
6 Attorney for Respondent
7 David Condon
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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the 29 day of December, 2015, the foregoing was delivered to the following persons in the manner indicated:

Mara Spitzer
1010 S. Rockwood Blvd., #316
Spokane, WA 99202

VIA REGULAR MAIL ☒
VIA CERTIFIED MAIL ☐
VIA FACSIMILE ☐
HAND DELIVERED ☐

Jamie Pendleton
P.O. Box 1888
Veradale, WA 99037

VIA REGULAR MAIL ☒
VIA CERTIFIED MAIL ☐
VIA FACSIMILE ☐
HAND DELIVERED ☐

Alexander J. Shogan, Jr.
5726 N. Sutherlin Street
Spokane, WA 99205

VIA REGULAR MAIL ☒
VIA CERTIFIED MAIL ☐
VIA FACSIMILE ☐
HAND DELIVERED ☐

12-29-15 / Spokane, WA
(Date/Place)

