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6 CITY OF SPOKANE ETHICS COMMISSION

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8 SPOKANE AREA NOW,

9 Plaintiff,

10 vs.

11 DAVID CONDON, MAYOR,

12 Defendant

RESPONDENT'S RESPONSE TO
NOW'S MOTION TO DISMISS AND
MOTION TO STRIKE

13
14 On January 19, 2016, the respondent filed a Motion to Dismiss that aspect of NOW's
15 Complaint which alleges that Mayor Condon was dishonest when he stated in a letter to the
16 City Council dated September 11, 2016, that Monique Cotton was selected to **"fit an existing
17 need in the Parks & Recreation Division."** The Motion to Dismiss was supported by a
18 Declaration of Leroy Eadie which states as follows:
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21 1. Mr. Eadie had read NOW's Ethics Complaint against Mayor Condon regarding
22 the alleged dishonest statement made to the City Council.

23 2. In April and May 2015, the Parks & Recreation Division had an existing need
24 for a Public Information Marketing and/or Branding professional. The need for a person with
25 these qualifications was based upon the Parks & Recreation Division's efforts in public
26 outreach, marketing and branding related to the Riverfront Park Redevelopment Program and
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30 MOTION TO STRIKE - page 1

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1 was further prompted by the fact that the Community Affairs Coordinator who had some, but
2 not all of the previously described duties was on leave from the parks & Recreation Division.

3 3. Mr. Eadie interviewed Ms. Cotton to determine if she had the skills and
4 experience to fill the existing needs and that after that interview, Mr. Eadie made the decision
5 to retain her to fill the existing need and to perform the previously listed activities.
6

7 The Declaration of Mr. Eadie filed by NOW on February 17, 2016, in no way
8 contradicts the foregoing undisputed facts. There was an existing need in the Parks &
9 Recreation Division and Ms. Cotton was selected by Mr. Eadie to fill that need after an
10 interview.
11

12 The statement made by Mayor Condon claimed by NOW to be dishonest was in fact
13 absolutely and completely true. Nothing in Mr. Eadie's second declaration or in NOW's brief
14 creates any factual issue whatsoever. Mr. Eadie's Declaration states unequivocally that a need
15 existed and that he had the authority to place, and did place, Ms. Cotton in the position to fill
16 the that need. There is no contrary evidence.
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19 Faced with the inalterable fact that the Mayor's statement was true, NOW suggests that
20 the Ethics Commission expand its inquiry into areas never raised in NOW's Complaint beyond
21 the specific allegation that Mayor Condon was allegedly dishonest when he told the Council
22 that Ms. Cotton was selected to "fit an existing need in the Parks & Recreation Division." Mr.
23 Eadie never stated that he was hiring Ms. Cotton, nor did Mayor Condon. Mr. Eadie never
24 stated that the position that Ms. Cotton was selected to fill was anything other than temporary,
25 nor did Mayor Condon. Mr. Eadie never stated in his initial Declaration anything other than
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1 the truth, that Ms. Cotton was selected by him to fit an existing need in the Parks & Recreation
2 Division. The Mayor's letter to the Council is entirely consistent with Mr. Eadie's unrefuted
3 declaration.

4 The issue before the Commission is very simple. Was Ms. Cotton selected by Mr.
5 Eadie to fit an existing need in the Parks & Recreation Division or not? Mr. Eadie's
6 Declaration in that regard is uncontroverted. There was an existing need. Ms. Cotton was
7 selected to fill it after an interview process and continued to work in filling that existing need
8 until her recent resignation. Mayor Condon's statement to the Council in this regard is
9 absolutely accurate. The facts are undisputed. This allegation in NOW'S Complaint must be
10 dismissed.
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13 PRESS CONFERENCE ALLEGATIONS

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15 NOW, in an attempt to semanticize an attack on the Mayor's credibility again leaves
16 out a well-recognized definition of the word Complaint, to-wit:

17 **Complaint . . . 1. Expression of grief, pain or dissatisfaction**

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19 **2. a) something that is the cause of subject of protest or**
20 **outry;**

21 **b) a bodily ailment or disease**

22 **3. a formal allegation against a party**

23 Webster's 9th New Collegiate Dictionary (1983)

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25
26 NOW's accusation of mayoral dishonesty based on the Mayor's truthful statement that no
27 official Complaint had been filed by Mayor Condon cannot be supported. Again, faced with
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1 the inalterable truth, that what the Mayor said at the press conference was true, that Ms. Cotton
2 had not filed any official complaint of any kind, NOW detours into allegations never
3 previously made that the Mayor's senior staff, none of whom are currently charged with an
4 ethics violation, had received expressions of concern regarding Straub's behavior in the spring
5 of 2015 and claims "that the City was aware of the complaints of unwanted sexual conduct."
6 This disingenuous argument does not address the specific allegation made by NOW that the
7 Mayor lied when he told the press that Ms. Cotton had not filed any official complaint.
8

9
10 NOW also claims, without support, that no investigation was conducted regarding Ms.
11 Cotton's expressed concerns regarding Straub's behavior at a March 31, 2015, meeting. But
12 the assertion is unsupportable. Ms. Sanders was tasked with interviewing Ms. Cotton based on
13 allegations concerning the Chief's behavior at that meeting and City Attorneys, Erin Jacobson
14 and Nancy Isserlis were tasked with interviewing the other participants at the meeting. The
15 obvious reason for the dichotomy in assignments was because of the fact that Ms. Cotton was
16 represented by counsel and neither Ms. Isserlis nor Ms. Jacobson as attorney could engage in
17 any ex parte contact with Ms. Cotton, a represented individual.
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20 NOW contends, without support, that Mayor Condon was aware of the fact that Ms.
21 Cotton's maiden name was Dugaw. The attached Declaration of Mayor Condon puts that
22 flight of fancy to rest. Attributing the contortion of the name "Dugaw" into "Cotton" as a
23 scrivener's error is patently mendacious.
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1 DATED at Spokane, Washington this 17 day of June, 2016.

2 EVANS, CRAVEN & LACKIE, P.S.

3 By James B. King, WSBA #8723
4 Attorney for Respondent
5 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 20 day of June 2016, the foregoing was delivered to the following persons in the manner indicated:

Rick Eichestaedt
Center for Justice
35 W. Main, Ste. 300
Spokane, WA 99201

VIA REGULAR MAIL []
VIA CERTIFIED MAIL []
VIA FACSIMILE []
HAND DELIVERED ☒
VIA EMAIL ☒

6-20-16 / Spokane, WA
(Date/Place)



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