

CITY OF SPOKANE ETHICS COMMISSION

SPOKANE AREA NOW,

Complainant,

vs.

DAVID CONDON, MAYOR,

Respondent

FINAL PREHEARING ORDER

The Spokane Ethics Commission met on August 10, 2016, and after input from the parties and their representatives, now, therefore, enters the following pretrial order:

I. Date, time and location of full hearing:

The full hearing on this matter will be held on: September 28, 2016, at 1:00 p.m. at Spokane City Hall, Council Chambers, or as otherwise directed.

II. Subpoenas for witnesses to attend hearing:

Proposed subpoenas must be provided to the Spokane Ethics Commission two weeks in advance of the hearing. The Commission will meet in special session two weeks before the hearing to decide whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission does not guarantee the attendance of witnesses; its subpoenas are not self-executing.

1 **III. Preliminary Order**

2 (i) This Order shall control the conduct of the full hearing of this matter.

3 (ii) Only parties of record may present argument or witnesses at the full hearing.

4 (iii) All witnesses shall testify under oath.

5 (iv) The Chair may cause the removal of any person who is being disruptive at the full hearing.

6 (v) The parties should assume that members of the Commission have read the document
7 commonly known as the "Cappel Report," or have at least some familiarity with such Report.

8 However, the Commission recognizes that the Report is not evidence, and advises the parties not to
9 rely on the Report when deciding whether to call witnesses or offer exhibits.
10

11 (vi) The Commission has dismissed Count 2 of Complainant's December 22, 2015 Complaint,
12 as clarified or amended without objection, on a voice vote. Entry of appropriate written findings and
13 conclusions regarding Count 2 will take place following the full hearing of this matter, or otherwise at
14 an open meeting properly noticed pursuant to applicable law.
15

16 (vii) All pending motions are hereby dismissed, without prejudice to any party's ability to re-
17 file or re-open motions on leave of the Commission. Any motion any party wishes to be heard must be
18 made in writing to the Commission, with copies served on all parties. No action will be taken on any
19 motion unless the motion is filed on or before September 7, 2016.
20

21 **IV. Conduct of hearing:**

22 **1. Allocation of time at full hearing:** Each side is allotted 90 minutes. Each side may use the
23 allotted time in any manner chosen. Staff will keep track of each party's time, and will notify the
24 Commission and parties when the allotted time is completed. Opening statement, direct and cross
25 examination of witnesses, argument over objections, and closing argument will all be allocated to the
26 party examination of the witness, making the argument, arguing the objection, or otherwise addressing
27
28

1 the Commission, as in opening or closing. Once the party's 90 minutes is completed, that party may
2 not present further evidence or argument.

3 **2. Commission participation:** Members of the Commission will be allowed to ask questions.
4 Such questioning will not count against any party's allotted time. Parties are permitted to follow up on
5 questions asked by Commissioners and answers received, but the time used in any follow-up questions,
6 and answers, will be charged against the party asking following up.

7
8 **3. Exhibits and Briefs:**

9 **A. Service and filing of exhibits:** Exhibits shall be served and filed two weeks in advance of
10 the full hearing. Electronic delivery is preferred, but hard/paper copies will be accepted.

11 **B. Objections to exhibits** must be filed one week prior to the full hearing. Responses are due
12 48 hours before the full hearing.

13 **C. Admissibility of exhibits:** Any exhibit not objected to will be deemed admissible.
14 Objections to exhibits will be argued on the day of the full hearing, in advance of the presentation of
15 testimony. Exhibits shall be offered at the full hearing by number; no objections will be permitted
16 during the full hearing to the admissibility of the exhibit used, except as set forth below (impeachment
17 exhibits).

18 **D. Numbering exhibits: exhibit lists:** Complainant will use exhibit numbers 1-20,
19 Respondent will use exhibit numbers 21-40. Each submitting party will pre-number and pre-mark
20 exhibits, and shall submit a list of all exhibits simultaneously with the exhibits served.

21 **E. Impeachment exhibits:** Any party may impeach any witness by exhibits offered to reflect
22 on the credibility of the witness. Newspaper articles and other, similar documents may not be used for
23 impeachment purposes unless the document was submitted in advance of, and opportunity was given
24 for argument prior to, the full hearing. These are the only impeachment documents which must be pre-
25 disclosed, in advance of the full hearing.

26 **F. The full hearing will commence with argument over objections to exhibits and/or**
27

1 **witnesses.** Time spent in such argument will be limited by the Chair to no more than ten minutes per
2 side, but this time will not be counted toward the 90 minute allocation for each party. Time-counting
3 will commence with item 5(A)(2), below.

4 **G. Hearing Briefs:** Parties must serve and file any briefing they wish the Commission to
5 consider on week prior to the full hearing. No later-filed brief shall be considered by the Commission,
6 unless prior to the full hearing, the Commission approves of such late filing.
7

8 **4. Witnesses lists:**

9 **A.** Witness lists shall be served on each party and filed with staff on or before September 7,
10 2014. Any objections must be served and filed on or before September 12, 2016. Requests for
11 subpoenas shall be served and filed on or before September 12, 2016. The Commission will hold a
12 special meeting on September 14, 2016, two weeks before the full hearing, in order to issue subpoenas
13 if requested, *inter alia*.
14

15 **B.** Witnesses shall testify under oath.

16 **5. Conduct of hearing:**

17 **A. Presentation of testimony and argument** at the full hearing shall occur as follows,
18 subject to the time allocations and limitations set forth above:
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20 1. Introduction of hearing by Commission Chair.

21 2. Opening Statement (non-argumentative summary of evidence to be presented)
22 by Complainant. Time shall be counted toward party's allotted 90 minutes.
23

24 3. Presentation of Complainant's Case (Presentation of Witness and Documentary
25 Evidence). Complainant calls witnesses.

26 4. Cross Examination of witnesses by Respondent.
27

28 5. Questions by Commission. (Time not counted against either party's allocation.)
29

1 6. Follow-up Questions by Complainant and Respondent.

2 7. Complainant rests.

3 8. Opening Statement (non-argumentative summary of evidence to be presented)
4 by Respondent. Time shall be counted toward party's allotted 90 minutes.

5
6 9. Presentation of Respondent's Case (Presentation of Witness and Documentary
7 Evidence). Respondent calls witnesses.

8 10. Cross Examination of witnesses by Complainant.

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10 11. Questions by Commission. (Time not counted against either party's allocation.)

11 12. Follow-up Questions by Complainant and Respondent.

12 13. Respondent rests.

13 14. Final Arguments.

14
15 **B. Rules of evidence:** It is the intention of the Ethics Commission to hear all relevant
16 evidence. Lack of conformity to state or federal rules of evidence goes to the weight, not the
17 admissibility, of evidence. However, questions with the purpose or effect of harassing or intimidating
18 a witness will not be tolerated. Cumulative or argumentative testimony, speculations of a witness, and
19 testimony based solely upon hearsay are not helpful to the truth-finding process and may therefore be
20 excluded, in the discretion of the Chair. Counsel are encouraged to point out to the Commission that
21 the opposing party's evidence, in whole or in part, consists of evidence that could be deemed
22 inadmissible under evidentiary rules applicable in other fora.
23

24 **C.** Motions to dismiss shall not be made or considered during the full hearing.

25
26 **6. Evidentiary objections at full hearing:** It is a part of the purpose of this Order to minimize
27 the objections made at hearing to preserve the flow of evidence and complete the full hearing in a
28 timely manner. However, parties retain the right to object when it is deemed advisable to do so.
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1 Objections shall be directed to the Chair, who will alone determine the appropriate response to the
2 objection. The Chair may consult with Commission counsel before ruling, but need not do so.

3 **V. Issue to be decided following full hearing:**

4 Whether Respondent Mayor David Condon violated SMC 01.04A.030N in response to one or
5 more questions posed during a press conference at the date and time alleged in Complainant's
6 December 22, 2015 Complaint.

7 **VI. Waiver of Right to Hearing Prior to Date and Time Scheduled for Full Hearing, and**
8 **Waiver of Objection of Same:**

9 At prior hearings in this matter, the parties were given opportunity to object to the delays
10 incurred in bringing this matter to full hearing. The delays have been caused by a desire to provide a
11 fair hearing by accommodating both counsel. No party has objected. Accordingly, it is ordered that the
12 parties and their attorneys have waived the right, if any, to have this matter heard prior to the date and
13 time set forth in this Prehearing Order.
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15 Approved by unanimous vote on the tenth day of August, 2016.
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20 Chair, Spokane Ethics Commission