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ORIGINAL

CITY OF SPOKANE ETHICS COMMISSION

ALEXANDER J. SHOGAN, JR.

Complainant,

vs.

DAVID CONDON, MAYOR OF THE
CITY OF SPOKANE,

Respondent.

RESPONDENT DAVID CONDON'S
MOTION TO DISMISS

COMES NOW, Defendant David Condon, Mayor of the City of Spokane, by and through his undersigned counsel of the law firm Evans, Craven, & Lackie, P.S., and hereby moves to dismiss Complainant's Amended Sworn Complaint Alleging Violation of Section 01.04.030 of City of Spokane Code of Ethics ("Amended Sworn Complaint") for the reasons set forth herein.

I. INTRODUCTION

Beyond the jurisdictional issue faced by the Commission, Complainant Shogan's Amended Sworn Complaint should be dismissed for several reasons.

First, Complainant's allegation concerning whether Mayor Condon truthfully stated that he had heard of issues concerning former Police Chief Frank Straub in the past "several weeks" was absolutely true. The record of the proceeding renders that fact unassailable.

RESPONDENT MAYOR CONDON'S
MOTION TO DISMISS - page 1

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 Second, Complainant contends that Mayor Condon should have answered “yes” rather
2 than “no” to a question asking whether any sexual harassment “complaints had been lodged”
3 against Straub. This allegation should be dismissed where:
4

5 (1) Mayor Condon’s statement was truthful – it was certainly not dishonest or an act
6 of moral turpitude. No formal complaints of sexual harassment had been lodged concerning
7 Straub by Ms. Cotton. In fact, Ms. Cotton had specifically requested that no investigation be
8 commenced and that her privacy would be respected.
9

10 (2) The issue concerning lodging of sexual harassment complaints has already been
11 litigated. Therefore, it should be rejected under principles of res judicata and/or collateral
12 estoppel.
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14 (3) Even if Complainant’s allegation were taken as true, it would amount to, at worst,
15 a de minimis disagreement over semantics. The City did not and could not suffer any harm as a
16 consequence of Mayor Condon’s statements. The Commission concurred in dismissing a
17 Complaint by Jamie Pendleton on the same issue. A Complaint by Mara Spitzer on the same
18 topic was likewise dismissed by the Commission. The Honorable Blaine Gibson specifically
19 found the disagreement to be nothing more than semantic, and at best, de minimis. This charge
20 should be dismissed in light of the principles of res judicata and/or collateral estoppel.
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23 Complainant’s final allegation, concerning a complaint by Carly Cortright should be
24 rejected because Ms. Cortright has rejected the contents of Mr. Shogan’s allegation under oath.
25 That is, it has been proven false by the lone, impartial percipient witness.
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II. APPENDICES

The following documents are attached hereto:

1. Declaration of Carly Cortright.
2. Transcript of September 22, 2015 Press Conference.
3. Complaint of Jamie Pendleton; Commission Minutes Concerning Disposition; and Findings and Conclusions of Ethics Commission.
4. Complaint of Mara Spitzer; Findings and Conclusions of Ethics Commission.
5. Ballot Synopsis of Recall Petition Against David Condon; Order Dismissing Recall Petition.
6. Oral Ruling of Judge Blaine G. Gibson on Recall Petition.

III. AUTHORITIES AND ARGUMENTS

A. Subsection C of Complainant's Amended Sworn Complaint Should Be Dismissed.

Subsection C of Complainant's *Amended Sworn Complaint* contends that Mayor Condon's responses to press inquiries during a September 22, 2015 press conference were false in two respects: (1) Mayor Condon stated that "these issues" were raised "in the last several weeks," and (2) Mayor Condon's response as to whether sexual harassment complaints were made against Chief Straub ("No") was false. A cursory review of the transcript from the press conference at issue shows that Complainant's first allegation lacks any merit whatsoever. Complainant's interpretation of the press conference is flatly incorrect. Complainant's second allegation should be dismissed where it was truthful, could amount to – at most – a de minimis violation of the Code of Ethics, and is barred by collateral estoppel and/or res judicata.

1 **1. "These Issues" in the "Last Several Weeks."**

2 Complainant contends that Mayor Condon's statement that he had learned of "these
3 issues" within "the last several weeks." *Amended Sworn Complaint, Paragraph C*. He surmises
4 that Mayor Condon's statements were false because he had learned of sexual harassment in
5 April of 2015 or September of 2015. *Id.* The record of the press conference clearly shows that
6 Mr. Shogan is mistaken. The quoted statements identified by Complainant were clearly
7 references to **non-sexual** concerns raised by ranking officials within the police department. The
8 distinction is made plain by the record:
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11 The September 22, 2015 Press Conference began with Mayor Condon announcing the
12 resignation of Straub. *Appendix 2, pages 2-4*. Mayor Condon was directly asked whether Straub
13 was forced to resign, or whether his resignation was voluntary. His response was as follows:
14 "You know, after receiving some concerns over the last few weeks, several weeks of his
15 **management style**, it was clear that we needed to move in a different direction." *Id. at pg. 4*.
16 Mayor Condon was asked whether sexual harassment complaints had been lodged, to which he
17 responded in the negative. *Id.* He was further asked whether rumors of an "inappropriate
18 relationship" had anything to do with Straub's resignation. *Id.* Again, Mayor Condon indicated
19 that: "The critical thing is the management style." *Id. at pg. 5*. He was asked to elaborate:
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23 You know, I spoke about this, you know, a few moments ago. I think
24 it's critical, as – as we implement a significant change, and I think you'll
25 probably be seeing that, and making sure that we stayed on that course
26 and – and held people accountable. There's ways to do that. And it then
27 become [sic] evident more and more that the – that the management
28 style of Chief Straub was not consistent with his senior management.

1 And they – they expressed that over the last several weeks. And then –
2 and we have been doing – I have been interviewing many of them, and
3 so the City Administrator – but culminated in a memorandum that I
believe you have that memorialized those needs.

4 REPORTER 4: Can you talk a little bit about some of those complaints
5 that they had with the Chief?

6 MAYOR CONDON: I think they're in front of you. You can see those.
7 And – and really, it was a – you can see them in front of you.

8 REPORTER 4: Senior staff letters, kind of, pull this out, some of the
9 concerns, outbursts, inappropriate use of language, retaliation.

10 *Appendix 2, pages 5-6.*

11 It is obvious that Mayor Condon's reference to "these issues" pertained to the
12 management style complaints including outbursts, inappropriate use of language, etc.
13 Accordingly, Mayor Condon's statements were not dishonest. Complainant has not provided
14 any evidence or argument that Straub was fired for any reason other than the complaints
15 concerning his management style as described above. Where it lacks merit, Complainant's
16 allegation should be dismissed.
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19 **2. Mayor Condon Did Not Violate the Code of Ethics.**

20 SMC Section 01.04.030N provides as follows:

21 Commission of Acts of Moral Turpitude or Dishonesty Prohibited.
22 No City officer or employee shall commit any act of moral turpitude
23 or dishonesty relating to his or her duties or position as a City officer
24 or employee or arising from business with the City. Conviction of a
25 felony or a misdemeanor involving moral turpitude or dishonesty, the
26 nature of which demonstrates lack of fitness for the position held, shall
27 be considered conclusive evidence of a violation of this Code of
Ethics. Demonstrated acts of moral turpitude or dishonesty are not
28 limited to felony or misdemeanor criminal convictions.

1 The Code of Ethics defines neither “moral turpitude” nor “dishonesty.”

2 **Moral Turpitude.** Acts of “moral turpitude” have been defined by Washington courts
3 for nearly a century as acts of “baseness, vileness, or depravity.” *In re Farina*, 94 Wash. App.
4 441, 460, 972 P.2d 531, 541 (1999), *as amended on reconsideration* (Apr. 13, 1999), *See Also*,
5 *City of Seattle v. Jones*, 3 Wn.App. 431, 467, 475 P.2d 790 (1970) (“A crime involves moral
6 turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which
7 a man owes to his fellow men or to society in general”); *Dearinger v. Dep’t of Soc. & Health*
8 *Servs.*, 130 Wash. App. 1032 (2005) (“Moral turpitude in this connection has been defined to
9 be an act of baseness, vileness, or depravity in the private and social duties which a man owes
10 to his fellow man or to society in general, contrary to the accepted and customary rule of right
11 and duty between man and man”); *Roane v. Columbian Pub. Co.*, 126 Wash. 416, 419, 218 P.
12 213, 214 (1923). **“The definition of moral turpitude does not encompass merely technical**
13 **and unwitting violations.”** *Farina, supra*.

14 **Dishonesty.** “Dishonesty” is not defined by the SMC. The Oxford Dictionary posits two
15 definitions of dishonesty: “(1) Deceitfulness shown in someone’s character or behavior, (1.1) A
16 fraudulent or deceitful act.”¹ Further, the Spokane Code of Ethics supplements the provisions of
17 RCW 42.20, et seq. (“Misconduct of Public Officers”). Notably, that section requires a showing
18 of a knowing violation or misleading statement.

19 Two additional terms assist in evaluating Mr. Shogan’s Complaint. As set forth above,
20 Mr. Shogan contends that the following exchange was dishonest:
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28 ¹ www.en.oxforddictionaries.com/definition/us/dishonesty.

1 REPORTER 1: Were there any sexual harassment complaints lodged
2 against Frank?

3 MAYOR CONDON: No.

4 *Appendix 2 - Transcript of Press Conference – September 22, 2015, pgs. 4-5.*

5 As the Judge Gibson recently determined in connection with his evaluation of the recall
6 petition, the critical inquiry is whether a “complaint” had been “lodged.” More specifically, had
7 a complaint alleging sexual harassment been lodged by Ms. Cotton.
8

9 The operative version of the term “complaint” implies the initiation of a formal process.
10 Black’s Law Dictionary defines “complaint” as follows:
11

- 12 1. The initial pleading that starts a civil action and states the basis for the court’s
13 jurisdiction, the basis for the plaintiff’s claim, and the demand for relief.
14
- 15 2. *Criminal law.* A formal charge accusing a person of an offense.

16 Garner, Bryan A., Black’s Law Dictionary, Deluxe Ninth Edition (2009).

17 The term “lodge[d]” is defined by Merriam Webster as “to lay (as a complaint) before a
18 proper authority.”² A synonym for that specific definition is to “file.” *Id.* The definition section
19 for “lodge” in Black’s Law Dictionary refers the reader to the definition of “file.” The Oxford
20 Dictionary reinforces and clarifies the formality of “lodging” a complaint: “Present (a complaint,
21 appeal, claim, etc.) formally to the proper authorities.”³ No formal process was initiated. The
22 Mayor was expressly told by Cotton that she was not pursuing a sexual harassment complaint,
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27 ² Merriam-Webster, “lodge.” www.merriam-webster.com/dictionary/lodge - accessed 9/21/2016

28 ³ www.en.oxforddictionaries.com/definition/us/lodge – accessed 9/21/2016

1 was not going to participate in any investigation into alleged sexual harassment, would not file
2 a formal complaint and wanted confidentiality.

3 No one filed or made any formal claim of sexual harassment against Straub prior to his
4 resignation. Monique Cotton still has not filed a formal claim and has specifically disclaimed
5 any intent to file a formal claim. The Code of Ethics does not contain any requirement that the
6 Mayor must answer not only truthfully answer the questions that are asked at a press conference,
7 but also identify questions which have not been asked and disclose responsive information. A
8 lack of disclosure, without inquiry, is not dishonest absent any duty to make such disclosures.
9
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11 In fact, should the Respondent have disclosed information conveyed to him by
12 Ms. Cotton in April of 2013, with her specific request for confidentiality, the Respondent would
13 have been in jeopardy of violating §01.04A.030I of the Code of Ethics which prohibits the
14 disclosure of confidential information gained by reason of an official position
15

16 No City officer or employee shall, except as required or
17 reasonably believed to be required for the performance of his/her
18 duties, disclose confidential information gained by reason of
19 his/her official position or use such information for his/her own
20 personal interest. "Confidential information" is all information,
21 whether transmitted orally or in writing, that the employee has
22 been informed, is aware of, or has reason to believe is intended to
23 be used only for City purposes, **is not intended for public
disclosure, or is otherwise of such a nature that it is not, at the
time, a matter of public record or public knowledge.**

24 **Confidential information includes**, but is not limited to,
25 personal information regarding City officials and **employees**;
26 private financial and other personal information provided by City
27 taxpayers, licensors, contractors, and customers; **intelligence and
investigative information, including the identity of persons
filing complaints**; formulas, designs, drawings, and research data
28 obtained or produced by the City and preliminary, nonfinal

1 assessments, opinions, and recommendations concerning City
2 policies and actions. . .

3 (emphasis added). Further, SMC 01.04A.030 states: "Performance of a legally required duty by
4 a City officer or employee shall not be considered a violation of the Code of Ethics."

5 **3. Subsection C of Complainant's Amended Sworn Complaint Should Be**
6 **Precluded Under Principles Of Res Judicata Or Collateral Estoppel.**

7 Under general principles of collateral estoppel and res judicata and given the prior
8 dismissal of the factually indistinguishable Pendleton, Spitzer, and Spokane NOW complaints,
9 as well as the recall petition which was recently litigated, this aspect of the Mr. Shogan's
10 Complaint is likewise subject to dismissal. The doctrine of res judicata is applicable in quasi-
11 judicial administrative matters. *Davidson v. Kitsap County*, 86 Wn.App. 673, 937 P.2d 1309
12 (1997). When an administrative proceeding is quasi-judicial and a final decision has been made,
13 the judicial doctrines of preclusion apply. *Hilltop Terrace Home Owners Assoc. v. Island*
14 *County*, 72 Wn.App. 91, 863 P.2d 604 (1993). The decisions of an administrative tribunal are
15 given preclusive effect under collateral estoppel principles when the agency acted within its
16 confidence to make a factual decision; when agency and court procedural differences are
17 minimal, and when policy considerations support application of the doctrine. *City of Bremerton*
18 *v. Sesko*, 100 Wn.App. 158, 995 P.2d 1257 (2000).
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23 Here, the Commission has already dismissed two complaints involving the same
24 response and conduct (Pendleton and Spitzer). This occurred at the Commission's January 13,
25 2016 meeting because it is undisputed that the statement by Mayor Condon on September 22
26 that no official complaints had been filed was true. Likewise, Judge Gibson determined that the
27
28

1 Mayor's press conference responses were not a violation of the oath of office, were not
2 misfeasance or malfeasance, Mr. Shogan's Complaint should be dismissed.

3 4. **Any Alleged Violation Of The Code Of Ethics Was Not Accompanied by**
4 **Any Harm, and Was De Minimis.**

5 The purpose and policy behind the Code of Ethics is as follows:

6 It is the intent of the City Council that this chapter be reasonably construed to
7 accomplish its purpose of protecting the public against decisions that are affected by
8 undue influence, conflicts of interest or any other violation of this Code of Ethics. This
9 Code of Ethics is supplemental to state law, including, but not limited to, chapter 42.20
10 RCW – Misconduct of Public Officers, chapter 42.23 RCW – Code of Ethics for
11 Municipal Officers – Contract Interests, and chapter 42.36 RCW – Appearance of
Fairness Doctrine.

12 SMC 01.04A.010(B).

13 There is no allegation, nor is there any evidence that the public requires "protection" due
14 to undue influence, conflicts, of interest, or any other violation of the Code of Ethics. Thus, even
15 if a technical violation of the Code of Ethics were to occur, it is contrary to the Code of Ethics
16 to pursue litigation over harmless violations.

17
18 Next, the Commission "shall" dismiss a complaint if the "allegation is a minor or de
19 minimis violation." SMC 01.04A.110D(1)(c). Recently, the Honorable Blaine G. Gibson
20 presided over the matter of *In re Recall of David Condon*, Spokane County Superior Court Cause
21 No. 16-203395-9. One of the allegations in the Recall Matter was whether Mayor Condon
22 "committed an act of malfeasance and misfeasance and violated his oath of office when he said
23 'no' at the September 22, 2015 press conference when asked the question 'were there any sexual
24 harassment complaints lodged against Frank?'" Judge Gibson, in rendering his oral ruling,
25 related that any disagreement concerning the Mayor's response was at best, semantic. He stated
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1 on the record that any such violation would amount to nothing more than a “de minimis”
2 violation insufficient to support a recall petition. He further found the allegation to lack both
3 legal and factual sufficiency to support an allegation of misfeasance, malfeasance, or a violation
4 of the oath of office.
5

6 **B. Subsection D of Complainant’s Amended Sworn Complaint Should Be Dismissed**
7 **at It Has Been Rejected by the Lone Percipient Witness.**

8 Subsection D of Complainant’s *Amended Sworn Complaint* contends as follows:

9 Furthermore, in Answering “No” as Stated Previously, Respondent
10 Denied his knowledge of an Allegation of Misconduct by Chief Straub
11 brought to the Respondent’s Attention in **August, 2013** by Carly
12 Cortwright [sic], who was at that time the Spokane Police Department
13 Executive. For Carly Cortwright [sic], the Culture created under Chief
14 Straub’s Leadership punished honesty. She has stated “The sexually
15 charged language and behavior created another layer of disrespect.”
16 Subsequent to this Event, Carly Cortwright [sic] was moved to a New
17 job in City Hall.

18 *Amended Sworn Complaint, pg. 2, Paragraph D.*

19 Ms. Cortright has signed a sworn declaration under penalty of perjury. In it, Ms.
20 Cortright rejects Mr. Shogan’s allegations in their entirety. Specifically, she did not bring
21 complaints concerning Police Chief Straub to Mayor Condon’s attention in August of 2013 – or
22 the attention of anyone else at the City for that matter. *Cortright Decl., Paragraph 4.* Ms.
23 Cortright did complain about Chief Straub. Ms. Cortright explained the timing of her complaint
24 in no uncertain terms:

25 Chief Straub did engage in inappropriate behavior, including the use of
26 sexually charged language, when I worked for the Spokane City Police
27 Department including remarks directed at myself and my job
28 performance. This behavior was inappropriate and unwelcome.
29 However, I never made any kind of complaint, formal or informal,

1 verbal or written, to anyone at the City of Spokane regarding this
2 behavior, nor did anyone else on my behalf.

3 After Chief Straub's resignation I decided to come forward with my
4 concerns regarding the behavior I witnessed while an employee of the
5 Spokane City Police Department and have now filed a complaint.

6 Mr. Shogan's allegation that Mayor David Condon knew of Chief
7 Straub's misbehavior or inappropriate treatment of me in August 2013
8 is incorrect because I never reported Chief Straub's behavior to anyone
9 until after Chief Straub resigned.

10 *Cortright Decl., Paragraphs 6-8.*

11 Mr. Shogan contends that by virtue of Ms. Cortright's alleged complaint(s), Mayor
12 Condon's statements at the press conference in September of 2015 were false. However, Ms.
13 Cortright's Declaration exposes the falsity of Mr. Shogan's allegations. It was at that press
14 conference that Straub's resignation was announced. Only after his resignation did Ms. Cortright
15 complaint of Straub's behavior.

16 Where Mr. Shogan's allegation concerning Ms. Cortright is obviously false and lacks a
17 factual or legal basis, it should be dismissed.

18 DATED at Spokane, Washington this 15th day of November, 2016.

19 EVANS, CRAVEN & LACKIE, P.S.

20 By 

21 James B. King, WSBA #8723
22 Markus W. Louvier, WSBA #39319
23 Attorneys for Respondent
24 David Condon
25
26
27
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1 CERTIFICATE OF SERVICE

2 Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury
3 under the laws of the State of Washington, that on the 15 day of November, 2016, the
4 foregoing was delivered to the following persons in the manner indicated:

5 Alexander J. Shogan, Jr.
6 5726 N. Sutherlin Street
7 Spokane, WA 99205

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

10
11
12 11-15-16 / Spokane, WA
13 (Date/Place)



EXHIBIT 1

CITY OF SPOKANE ETHICS COMMISSION

ALEXANDER J. SHOGAN, JR.

Complainant,

vs.

DAVID CONDON, MAYOR OF THE
CITY OF SPOKANE,

Respondent.

DECLARATION OF CARLY
CORTRIGHT

Carly Cortright, under penalty of perjury under the laws of the State of Washington, states
and declares as follows:

1. I am over 18 years of age and am competent to be a witness herein.
2. I have personal knowledge of the facts set forth in this Declaration.
3. I have read the Amended Sworn Complaint filed by Alexander J. Shogan, with
the City of Spokane Ethics Commission (attached as Exhibit A hereto).
4. Paragraph D of Mr. Shogan's Amended Complaint alleges that I brought to
Mayor Condon's attention or to the City's attention in August 2013 a Complaint regarding
former Spokane City Policy Chief Frank Straub's behavior in the workplace.

DECLARATION OF CARLY CORTRIGHT - Page 1

Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; fax (509) 455-3632

1 5. Mr. Shogan's Amended Complaint alleges, directly or indirectly, that I made a
2 formal or informal complaint regarding Mr. Straub's behavior as directed towards me when I
3 was employed at the Spokane Police Department.

4 6. Chief Straub did engage in inappropriate behavior, including the use of
5 sexually charged language, when I worked for the Spokane City Police Department including
6 remarks directed at myself and my job performance. This behavior was inappropriate and
7 unwelcome. However, I never made any kind of complaint, formal or informal, verbal or
8 written, to anyone at the City of Spokane regarding this behavior, nor did anyone else on my
9 behalf.

10 7. After Chief Straub's resignation I decided to come forward with my concerns
11 regarding the behavior I witnessed while an employee of the Spokane City Police Department
12 and have now filed a complaint.

13 8. Mr. Shogan's allegation that Mayor David Condon knew of Chief Straub's
14 misbehavior or inappropriate treatment of me in August 2013 is incorrect because I never
15 reported Chief Straub's behavior to anyone until after Chief Straub resigned.

16 9. Mr. Shogan has never asked me when I first complained regarding Chief
17 Straub's behavior.

18 DATED at Spokane, Washington this 19 day of January, 2016.

19 By:

20 Carly Cortright

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 17 day of January, 2016, the foregoing was delivered to the following persons in the manner indicated:

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

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

1-19-16 / Spokane, WA
(Date/Place)



CITY OF SPOKANE ETHICS COMMISSION

ETHICS COMPLAINT FORM

Please review the City of Spokane's Code of Ethics – Chapter 1.04A SMC – before completing this complaint form. When you have completed this form, submit it to:

City of Spokane Ethics Commission
Attention: Rebecca Riedinger
Office of the City Attorney
5th Floor Municipal Building
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

or at: rriedinger@spokanecity.org

Pursuant to the City of Spokane's Code of Ethics, I am filing a complaint regarding conduct which I believe constitutes a violation of the City's Code of Ethics.

Name, position, and department of person(s) I believe to have violated the Code of Ethics:

Name: David A. Condon

Position/Title: Mayor of the City of Spokane

Nature of Code of Ethics violation:

What specific provision of SMC 1.04A.030 do you believe has been violated?

Section 01.04A.030 (N) Commission of Acts of
Moral Turpitude or Dishonesty Prohibited

Describe in as much detail as possible the alleged Code of Ethics violation conduct. Attach additional sheets of paper, if necessary. Please include all documentation you believe demonstrates a violation. Your description should include the date, location and frequency of the alleged violation.

See Amended Sworn Complaint Alleging
Violation of Section 01.04A.030(N) of the
City of Spokane Code of Ethics -
Commission of Moral Turpitude or
Dishonesty Prohibited.

Names and positions of the persons who may have witnessed the event:

<u>Former Spokane Chief of Police Frank Straub</u>	
<u>City Administrator Theresa Sanders</u>	
<u>Monique Cotton</u>	<u>Joe Walker</u>
<u>Brian Coddington</u>	<u>Brad Arleth</u>
<u>Carly Cortwright</u>	

Evidence or documentation

Please list any evidence or documentation that would support your allegation of a Code of Ethics violation. Indicate whether you can personally provide that information.

See Amended Sworn Complaint Alleging Violation
of Section 01.04A.030(N) City of Spokane
Code of Ethics - Commission of Acts of
Moral Turpitude or Dishonesty Prohibited

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that to the best of my knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true and correct.

Alexander J. Shogan, Jr.
Complainant's Signature

December 14, 2015
Date

Date and Place (e.g. City, State)

12/1/2015 Spokane, Washington

Name (please print): Alexander J. Shogan, Jr.

Address: 5726 N. Sutherland Street, Spokane, WA 99205

Phone Number(s): (509) 954-0727

E-Mail Address: joeshoganjr@gmail.com

CITY OF SPOKANE ETHICS COMMITTEE

ALEXANDER J. SHOGAN, JR.
Complainant

DAVID CONDON, MAYOR OF
THE CITY OF SPOKANE,
Respondent

)
) NO.
) AMENDED
) SWORN COMPLAINT ALLEGING
) VIOLATION OF SECTION 01.04.030 of
) CITY OF SPOKANE CODE OF ETHICS
)
)
)
)
)

STATE OF WASHINGTON)

County of Spokane)

ALEXANDER J. SHOGAN, JR being duly sworn, on oath,
states as follows:

- A. That he is a Resident of the City of Spokane currently living in the Northwest area of the 3rd Council District and a Registered Voter in that District.
- B. That he has read and is familiar with the City of Spokane Code of Ethics contained in Chapter 01.04 of the Code.
- C. That on December 2, 2015 he filed an **Ethics Complaint** against David Condon, Mayor of the City of Spokane, Respondent herein, stating in part that: With regard to rumors of Misconduct by the then Spokane Police Chief Frank Straub, Respondent had heard of "these issues" in the "last several weeks."
- In Fact, the Respondent was made aware of Extremely Serious Misconduct - **Sexual Harassment**- allegations against Chief Straub in April, 2015 during a Confrontation involving himself, City Administrator Theresa Sanders, and Monique Cotton, then Spokesperson for the Spokane Police Department. Cotton reported to the Respondent and Sanders details of sexual harassment of her by Chief Straub. Again, in September of 2015, when Respondent accepted the Resignation of Chief Straub, he was asked at that time whether there were any sexual harassment complaints against Chief Straub and Respondent replied, "No."

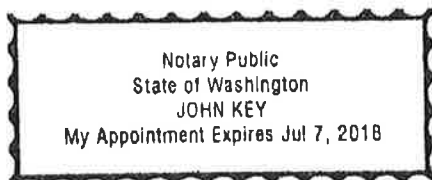
1 D. Furthermore, in Answering "No" as Stated Previously,
2 Respondent Denied his Knowledge of an Allegation
3 of Misconduct by Chief Straub brought to the Respondent's
4 Attention in **August, 2013** by Carly Cortwright, who was
5 at that time the Spokane Police Department Executive.
6 For Carly Cortwright, the Culture created under
7 Chief Straub's Leadership punished honesty. She has stated
8 "The sexually charged language and behavior created another
9 layer of disrespect." Subsequent to this Event,
10 Carly Cortwright was moved to a New job in City Hall.

11 E. As Mayor of the City of Spokane, Respondent is a Public
12 Official governed by the City of Spokane Code of Ethics.
13 **His Failure to Tell the Truth on Several Occasions**
14 regarding the Claims of Sexual Harassment made by
15 Both Carly Cortwright and Monique Cotton against then
16 Police Chief Frank Straub **Constitute a Violation of Section**
17 **01.04A.030 Prohibited Conduct of the Spokane Code of Ethics**
18 as follows:

19 N. Commission of Acts of Moral Turpitude or Dishonesty
20 Prohibited.

21 
22 ALEXANDER J. SHOCHAN, JR.

23 SUBSCRIBED AND SWORN TO before me this 14 day of December, 2015.



NOTARY PUBLIC in and for the State of Washington,
residing at Spokane.
My Commission expires: 7/7/18

EXHIBIT 2



COURT REPORTING

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

TRIAL PRESENTATION

MOCK JURY SERVICES

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**MAYOR OF SPOKANE DAVID CONDON
AND CITY COUNCIL PRESIDENT BEN STUCKART**

**PRESS CONFERENCE
HELD ON
TUESDAY, SEPTEMBER 22, 2015**

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SPOKANE, WASHINGTON 99202**

<p style="text-align: right;">2</p> <p>1 MAYOR OF SPOKANE DAVID CONDON 2 AND CITY COUNCIL PRESIDENT BEN STUCKART 3 PRESS CONFERENCE HELD ON 4 TUESDAY, SEPTEMBER 22, 2015</p> <p>5 6 MAYOR CONDON: I'm with Council president. 7 Commanding a police department is difficult work. 8 The environment is demanding, and sometimes the time comes 9 to move in a different direction. Today I accepted Frank 10 Straub's resignation. He will be reassigned to City 11 Attorney to ensure important strategic criminal justice 12 initiatives and ensure a seamless transition as we pursue 13 those. His last day of city employment will be January 1st, 14 2016. Rick Dobrow will serve as the interim chief. 15 The Spokane Police Division has come a long way 16 under Frank's leadership. Crime has decreased by double 17 digits last year and is again down double digits through the 18 first three quarters of this year. The use of force 19 incidents have also declined significantly as officer 20 training has emphasized new crisis intervention and de- 21 escalation techniques. Staffing has risen to just over 300 22 officers with a plan in place to keep that level consistent. 23 Transparency, including the use of body cameras, 24 is at an all-time high and will continue. Officers are 25 building new relationships with neighborhoods they serve.</p>	<p style="text-align: right;">4</p> <p>1 MAYOR CONDON: You know, after receiving some 2 concerns over the last few weeks, several weeks of his 3 management style, it was clear that we needed to move in a 4 direction. Change management is different as we implement 5 some of these, and I think it's critical, as we moved 6 forward, it was mutually agreed that this is the best way to 7 do that.</p> <p>8 REPORTER: That Monique Cotton was transferred to 9 the Parks Department related to this any way?</p> <p>10 MAYOR CONDON: The -- it's definitely part of the 11 -- the management process, but also as we sought to look for 12 the -- the background in someone we had in this organization 13 for our parks, and particularly the capability of marketing, 14 a capability of very proactive public information and taking 15 it beyond as public information, but also as we -- we 16 implement the new park strategy, she will continue to be 17 there and is serving very well there as we roll out the new 18 Riverfront Park and other major initiatives in the Parks 19 Department.</p> <p>20 REPORTER 1: But has that had something to do with 21 her transfer?</p> <p>22 MAYOR CONDON: It was -- she definitely was part 23 of this discussion.</p> <p>24 REPORTER 1: Were there any sexual harassment 25 complaints lodged against Frank?</p>
<p style="text-align: right;">3</p> <p>1 Public trust and confidence in our police officers has risen 2 dramatically. We have been fortunate to collaborate with 3 the Independent Citizen Use of Force Commission and the U.S. 4 Department of Justice COPS program, as we set out to 5 reintroduce our officers to the community and improve law 6 enforcement service citywide.</p> <p>7 We appreciate very much Frank's service and the 8 work he has done to help us get to this point. He gave us 9 great momentum to build from law enforcement organizations, 10 city and community, and we remain committed to those 11 efforts.</p> <p>12 The men and women of the Spokane Police Division 13 have done outstanding work over the past four years. Their 14 commitment to serving this community and their tireless 15 efforts in delivering Spokane to us is well down the road to 16 becoming the safest city of our size.</p> <p>17 There is still work to be done, and the Spokane 18 Police Division is up to that challenge. The Division is 19 under the leadership of Chief Rick Dobrow, who will continue 20 driving down crime and building relationships with our 21 community as we go. With that, I'll be followed by Council 22 President.</p> <p>23 MR. STUCKART: We are open for questions.</p> <p>24 REPORTER: Was Frank forced to resign, or was this 25 on his own?</p>	<p style="text-align: right;">5</p> <p>1 MAYOR CONDON: No.</p> <p>2 REPORTER 2: There have been rumors of an 3 inappropriate relationship between the Chief and Ms. Dugaw 4 (phonetic). Has that been brought up at all? Was that made 5 any part of this as well?</p> <p>6 MAYOR CONDON: The critical thing is the 7 management style. The issue with -- that you speak of, but 8 there has been no official filing of anything.</p> <p>9 REPORTER 3: When you say management style, can 10 you elaborate?</p> <p>11 MAYOR CONDON: You know, I spoke about this, you 12 know, a few moments ago. I think it's critical, as -- as we 13 implement a significant change, and I think you'll probably 14 be seeing that, and making sure that we stayed on that 15 course and -- and held people accountable. There's ways to 16 do that. And it then become evident more and more that the 17 -- that the management style of Chief Straub was not 18 consistent with his senior management.</p> <p>19 And they -- they expressed that over the last 20 several weeks. And then -- and we have been doing -- I have 21 been interviewing many of them, and so the City 22 Administrator -- but culminated in a memorandum that I 23 believe you have that memorialized those needs.</p> <p>24 REPORTER 4: Can you talk a little bit about some 25 of those complaints that they had with the Chief?</p>

<p style="text-align: right;">6</p> <p>1 MAYOR CONDON: I think they're in front of you.</p> <p>2 You can see those. And -- and really, it was a -- you can</p> <p>3 see them in front of you.</p> <p>4 REPORTER 4: Senior staff letters, kind of, pull</p> <p>5 this out, some of the concerns, outbursts, inappropriate use</p> <p>6 of language, retaliation.</p> <p>7 REPORTER 5: I think -- you know, that you said</p> <p>8 the Chief put in some pretty strict reforms. Do you think</p> <p>9 this could just be outbreaks among the rank and file trying</p> <p>10 to get out a police chief who was making changes within the</p> <p>11 Department?</p> <p>12 MAYOR CONDON: You know, I think that you -- you</p> <p>13 drive at an issue of how do we continue to move us forward</p> <p>14 in a culture change. But -- and that's why -- I mean, this</p> <p>15 is -- this is not a decision that we make lightly, meaning</p> <p>16 the progress that our Police Division has made is -- is now</p> <p>17 being nationally recognized. But that being said, that's</p> <p>18 why we needed to -- to do firsthand interviews with those</p> <p>19 folks and really substantiate them.</p> <p>20 And I think as you -- as you look at these, and</p> <p>21 yes, we needed to make sure we had the right people in</p> <p>22 place. We have an excellent senior management team in the</p> <p>23 Police Division. Many of them were selected by Frank</p> <p>24 Straub, and they will continue in those positions with Rick</p> <p>25 Dobrow. Rick Dobrow was selected by Chief Straub.</p>	<p style="text-align: right;">8</p> <p>1 REPORTER 6: And when you sought out Chief Straub</p> <p>2 for this job and that went through a process, what is the</p> <p>3 process going to look like for his replacement? Is Dobrow</p> <p>4 going to stay? Is he an interim? Are you going to go out</p> <p>5 for a national search for a new chief?</p> <p>6 MAYOR CONDON: You know, at this point, it's --</p> <p>7 Chief Dobrow will serve in an interim capacity, but there is</p> <p>8 no immediate steps to be taken for a national search,</p> <p>9 although I think his -- his role as the Assistant Chief has</p> <p>10 -- well, his role will serve us well as we implement many of</p> <p>11 these programs and procedures and pilot programs. We've</p> <p>12 seen great success in them, and so my opinion is to stay</p> <p>13 that course. Rick Dobrow is committed to -- to these</p> <p>14 programs that have been brought to Spokane, so there is no</p> <p>15 immediate steps to do anything except to have Rick Dobrow as</p> <p>16 the Chief and the senior management team to stay in place.</p> <p>17 REPORTER: And just real quick. Council has</p> <p>18 really high confidence in Chief Dobrow. I have never dealt</p> <p>19 with anybody in the police force that has answered any</p> <p>20 question or concern I have faster or more thoroughly, and</p> <p>21 you can do exactly your job (phonetic).</p> <p>22 REPORTER: Mayor, he was your choice for police</p> <p>23 chief. Do you think this will have any sort of effect of</p> <p>24 your re-election?</p> <p>25 MAYOR CONDON: You know, let's remember how this</p>
<p style="text-align: right;">7</p> <p>1 And so we will -- we are committed to the</p> <p>2 programs, whether it be the Youth Engagement programs, to</p> <p>3 the -- the management and utilizing the tools of comp staff,</p> <p>4 those have proven to be highly regarded and useful in</p> <p>5 bringing down our crime rate and -- and really having the</p> <p>6 best officers that we've had in years, both trained and</p> <p>7 automobile (phonetic).</p> <p>8 MR. STUCKART: Time for two more questions.</p> <p>9 REPORTER 5: When did you guys first hear about</p> <p>10 these complaints, how long ago, and can we expect any other</p> <p>11 shakeups within the Police Department, any other</p> <p>12 resignations at this point?</p> <p>13 MAYOR CONDON: You know, it's been -- over the</p> <p>14 last several weeks, as we have been, you know, starting to</p> <p>15 hear of some of these -- these issues that maybe rise above</p> <p>16 folks, you know, just complaining about those changes and</p> <p>17 there's new ways of doing things, which I suggest would be</p> <p>18 in any organization as you -- as you make major changes. I</p> <p>19 see a very steady senior leadership in at least in the</p> <p>20 interim (phonetic). I have full confidence in -- in Rick</p> <p>21 Dobrow. He has been with the Police Division for 21 years.</p> <p>22 He is very steady. And there's no initial plans to do any</p> <p>23 type of changes in the -- in the senior management.</p> <p>24 REPORTER 5: So no other resignations, either</p> <p>25 within the Police Department or outside of it.</p>	<p style="text-align: right;">9</p> <p>1 process went. It was a national search. All of the senior</p> <p>2 positions are ultimately appointed by me and confirmed by</p> <p>3 the Council. This was probably one of the most engaged</p> <p>4 citizens' election process, if, well not, it was the most.</p> <p>5 And so it went through five different selections mates.</p> <p>6 He was the overwhelming choice by those selection</p> <p>7 committees, especially the -- the community-based committees</p> <p>8 that met that day. And so I think as we see this, yes, all</p> <p>9 these positions are appointed by the mayor and confirmed by</p> <p>10 the Council. But this is the selection that was made by</p> <p>11 this community.</p> <p>12 And let's remember where we've come in the last</p> <p>13 four years. This -- the national expertise that Frank</p> <p>14 Straub brought to our community, the programs, the</p> <p>15 facilitation of the education and training of our senior</p> <p>16 officers had never been at this level before. And so those</p> <p>17 will continue.</p> <p>18 And what's -- and what is exciting is just that</p> <p>19 was an investment in our officers that we have not seen.</p> <p>20 With the -- with the full allocation by the City Council, we</p> <p>21 -- we allocated budget resources to the Police Division that</p> <p>22 we hadn't seen in years that allowed us to invest in our</p> <p>23 officers and allowed us -- you know, we're the only one that</p> <p>24 we know of, maybe in the country, that's 40 hours of</p> <p>25 critical incident training. And you've seen the dividends</p>

<p style="text-align: right;">10</p> <p>1 that they've been paid. You know, we have had reduction in 2 use of force. We have better-trained officers to deal with 3 those that are in mental crisis. The story continues. The 4 youth programs that we've had. We were recognized by the 5 White House just a month ago. 6 As I traveled there with members of our community 7 and with the Chief and presented on some of those, of how we 8 were making true changes and -- and really growing those 9 programs, whether it be WPI or whether it be other 10 initiatives of engaging our youth. And I think our 11 community has seen that and will continue to see that 12 because that has spread throughout the entire Police 13 Division. Thank you very much. 14 REPORTER: Frank, can you answer some questions? 15 MR. STUCKART: Sure. 16 REPORTER: Who will be paying the Chief's salary 17 at the Attorney's Office? Will it still come from the 18 Police Department or the City Attorney's Office? 19 MR. STUCKART: Those details are still being 20 worked out at this point. We've really just gotten together 21 today, so we've got some work to do in figuring out the 22 details. 23 REPORTER: And also, you didn't really speak of 24 why the sudden adjournments, why did it just come together 25 today and why are we all gathered here with ten minutes'</p>	<p style="text-align: right;">12</p> <p>1 sure that for Monique's sake, that she was taking another 2 career advancement and moving forward in her career, taking 3 a job that was -- we just wanted to be sure that that would 4 be a good for her. 5 REPORTER: So there was other factors in her 6 \$10,000 pay increase and -- 7 MR. STUCKART: No. 8 REPORTER: -- move to Parks? 9 MR. STUCKART: No. 10 (End of September 22, 2015 Press Conference) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">11</p> <p>1 warning? 2 MR. STUCKART: Well, I think it may feel sudden to 3 you, but this is something that's been going on and being 4 discussed. As we talked about, there have been some 5 conversations that have been going on for the past couple of 6 weeks that have occurred, and it came to a point where there 7 was a mutually-agreed upon decision that it was time for 8 everybody to move forward. 9 REPORTER: And Theresa Sanders described to me the 10 \$10,000 pay increase that Monique Cotton got as enticement, 11 to entice her to Rec and Parks, and the Mayor said it didn't 12 sound like it was an enticement. How do you reconcile what 13 Theresa Sanders says a month ago? 14 MR. STUCKART: So you're familiar with the step 15 system we have. Since she was close to the step -- to the 16 step increase, she was weeks away from her, you know, being 17 in a step increase. So that was factored in there. 18 Ms. Nadrich (phonetic) reported on -- I believe 19 also it included a bump that had been heard with the 20 resolution of the -- a contract, and a contract that got 21 ultimate -- everybody bumped in -- 22 REPORTER: Why did she describe that as an 23 enticement, then? 24 MR. STUCKART: To me, it was part a step increase 25 to move her forward so she -- you know, she wanted to be</p>	<p style="text-align: right;">13</p> <p>1 CERTIFICATE 2 3 I, Marilyn J. Broyles, do hereby certify that I 4 reported all proceedings adduced in the foregoing matter 5 and that the foregoing transcript pages constitutes a full, 6 true, and accurate record of said proceedings to the best 7 of my ability. 8 9 I further certify that I am neither related to 10 counsel or any part to the proceedings nor have any 11 interest in the outcome of the proceedings. 12 13 IN WITNESS HEREOF, I have hereunto set my hand this 14 19th day of January, 2016. 15 16 17 18 19 20 /S/ Marilyn J. Broyles 21 22 23 24 25</p>

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1 CORRECTION SHEET

2 Transcript of: Transcription Date: 09/22/15

3 Regarding: Press Conference

4 Transcriber: Broyles

5 _____

6 Please make all corrections, changes or clarifications

7 to your testimony on this sheet, showing page and line

8 number. If there are no changes, write "none" across

9 the page. Sign this sheet on the line provided.

10 Page Line Reason for Change

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24 Signature _____

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15

1 DECLARATION

2 Transcript of: Transcription Date: 09/22/15

3 Regarding: Press Conference

4 Transcriber: Broyles

5 _____

6 _____

7 I declare under penalty of perjury the following to

8 be true:

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10 I have read my deposition and the same is true and

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12 by me on the Correction Page herein.

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15 on the _____ day of _____, 2016.

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24 Signature _____

25 _____

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EXHIBIT 1

MAYOR OF SPOKANE DAVID CONDON
AND CITY COUNCIL PRESIDENT BEN STUCKART

PRESS CONFERENCE
HELD ON
TUESDAY, SEPTEMBER 22, 2015

TRANSCRIBED BY
NAEGELI DEPOSITION AND TRIAL
25 SOUTH ALTAMONT STREET
SPOKANE, WASHINGTON 99202

Public trust and confidence in our police officers has risen dramatically. We have been fortunate to collaborate with the Independent Citizen Use of Force Commission and the U.S. Department of Justice COPS program, as we set out to reintroduce our officers to the community and improve law enforcement service citywide.

We appreciate very much Frank's service and the work he has done to help us get to this point. He gave us great momentum to build from law enforcement organizations, city and community, and we remain committed to those efforts.

The men and women of the Spokane Police Division have done outstanding work over the past four years. Their commitment to serving this community and their tireless efforts in delivering Spokane to us is well down the road to becoming the safest city of our size.

There is still work to be done, and the Spokane Police Division is up to that challenge. The Division is under the leadership of Chief Rick Dobrow, who will continue driving down crime and building relationships with our community as we go. With that, I'll be followed by Council President.

MR. STUCKART: We are open for questions.

REPORTER: Was Frank forced to resign, or was this on his own?

MAYOR OF SPOKANE DAVID CONDON
AND CITY COUNCIL PRESIDENT BEN STUCKART
PRESS CONFERENCE HELD ON
TUESDAY, SEPTEMBER 22, 2015

MAYOR CONDON: I'm with Council president.
Commanding a police department is difficult work.

The environment is demanding, and sometimes the time comes to move in a different direction. Today I accepted Frank Straub's resignation. He will be reassigned to City Attorney to ensure important strategic criminal justice initiatives and ensure a seamless transition as we pursue those. His last day of city employment will be January 1st, 2016. Rick Dobrow will serve as the interim chief.

The Spokane Police Division has come a long way under Frank's leadership. Crime has decreased by double digits last year and is again down double digits through the first three quarters of this year. The use of force incidents have also declined significantly as officer training has emphasized new crisis intervention and de-escalation techniques. Staffing has risen to just over 300 officers with a plan in place to keep that level consistent.

Transparency, including the use of body cameras, is at an all-time high and will continue. Officers are building new relationships with neighborhoods they serve.

MAYOR CONDON: You know, after receiving some concerns over the last few weeks, several weeks of his management style, it was clear that we needed to move in a direction. Change management is different as we implement some of these, and I think it's critical, as we moved forward, it was mutually agreed that this is the best way to do that.

REPORTER: That Monique Cotton was transferred to the Parks Department related to this any way?

MAYOR CONDON: The -- it's definitely part of the -- the management process, but also as we sought to look for the -- the background in someone we had in this organization for our parks, and particularly the capability of marketing, a capability of very proactive public information and taking it beyond as public information, but also as we -- we implement the new park strategy, she will continue to be there and is serving very well there as we roll out the new Riverfront Park and other major initiatives in the Parks Department.

REPORTER 1: But has that had something to do with her transfer?

MAYOR CONDON: It was -- she definitely was part of this discussion.

REPORTER 1: Were there any sexual harassment complaints lodged against Frank?

1 MAYOR CONDON: No.

2 REPORTER 2: There have been rumors of an
3 inappropriate relationship between the Chief and Ms. Dugaw
4 (phonetic). Has that been brought up at all? Was that made
5 any part of this as well?

6 MAYOR CONDON: The critical thing is the
7 management style. The issue with -- that you speak of, but
8 there has been no official filing of anything.

9 REPORTER 3: When you say management style, can
10 you elaborate?

11 MAYOR CONDON: You know, I spoke about this, you
12 know, a few moments ago. I think it's critical, as -- as we
13 implement a significant change, and I think you'll probably
14 be seeing that, and making sure that we stayed on that
15 course and -- and held people accountable. There's ways to
16 do that. And it then become evident more and more that the
17 -- that the management style of Chief Straub was not
18 consistent with his senior management.

19 And they -- they expressed that over the last
20 several weeks. And then -- and we have been doing -- I have
21 been interviewing many of them, and so the City
22 Administrator -- but culminated in a memorandum that I
23 believe you have that memorialized those needs.

24 REPORTER 4: Can you talk a little bit about some
25 of those complaints that they had with the Chief?

1 And so we will -- we are committed to the
2 programs, whether it be the Youth Engagement programs, to
3 the -- the management and utilizing the tools of comp staff,
4 those have proven to be highly regarded and useful in
5 bringing down our crime rate and -- and really having the
6 best officers that we've had in years, both trained and
7 automobile (phonetic).

8 MR. STUCKART: Time for two more questions.

9 REPORTER 5: When did you guys first hear about
10 these complaints, how long ago, and can we expect any other
11 shakeups within the Police Department, any other
12 resignations at this point?

13 MAYOR CONDON: You know, it's been -- over the
14 last several weeks, as we have been, you know, starting to
15 hear of some of these -- these issues that maybe rise above
16 folks, you know, just complaining about those changes and
17 there's new ways of doing things, which I suggest would be
18 in any organization as you -- as you make major changes. I
19 see a very steady senior leadership in at least in the
20 interim (phonetic). I have full confidence in -- in Rick
21 Dobrow. He has been with the Police Division for 21 years.
22 He is very steady. And there's no initial plans to do any
23 type of changes in the -- in the senior management.

24 REPORTER 5: So no other resignations, either
25 within the Police Department or outside of it.

1 MAYOR CONDON: I think they're in front of you.
2 You can see those. And -- and really, it was a -- you can
3 see them in front of you.

4 REPORTER 4: Senior staff letters, kind of, pull
5 this out, some of the concerns, outbursts, inappropriate use
6 of language, retaliation.

7 REPORTER 5: I think -- you know, that you said
8 the Chief put in some pretty strict reforms. Do you think
9 this could just be outbreaks among the rank and file trying
10 to get out a police chief who was making changes within the
11 Department?

12 MAYOR CONDON: You know, I think that you -- you
13 drive at an issue of how do we continue to move us forward
14 in a culture change. But -- and that's why -- I mean, this
15 is -- this is not a decision that we make lightly, meaning
16 the progress that our Police Division has made is -- is now
17 being nationally recognized. But that being said, that's
18 why we needed to -- to do firsthand interviews with those
19 folks and really substantiate them.

20 And I think as you -- as you look at these, and
21 yes, we needed to make sure we had the right people in
22 place. We have an excellent senior management team in the
23 Police Division. Many of them were selected by Frank
24 Straub, and they will continue in those positions with Rick
25 Dobrow. Rick Dobrow was selected by Chief Straub.

1 REPORTER 6: And when you sought out Chief Straub
2 for this job and that went through a process, what is the
3 process going to look like for his replacement? Is Dobrow
4 going to stay? Is he an interim? Are you going to go out
5 for a national search for a new chief?

6 MAYOR CONDON: You know, at this point, it's --
7 Chief Dobrow will serve in an interim capacity, but there is
8 no immediate steps to be taken for a national search,
9 although I think his -- his role as the Assistant Chief has
10 -- well, his role will serve us well as we implement many of
11 these programs and procedures and pilot programs. We've
12 seen great success in them, and so my opinion is to stay
13 that course. Rick Dobrow is committed to -- to these
14 programs that have been brought to Spokane, so there is no
15 immediate steps to do anything except to have Rick Dobrow as
16 the Chief and the senior management team to stay in place.

17 REPORTER: And just real quick. Council has
18 really high confidence in Chief Dobrow. I have never dealt
19 with anybody in the police force that has answered any
20 question or concern I have faster or more thoroughly, and
21 you can do exactly your job (phonetic).

22 REPORTER: Mayor, he was your choice for police
23 chief. Do you think this will have any sort of effect of
24 your re-election?

25 MAYOR CONDON: You know, let's remember how this

1 process went. It was a national search. All of the senior
2 positions are ultimately appointed by me and confirmed by
3 the Council. This was probably one of the most engaged
4 citizens' election process, if, well not, it was the most.
5 And so it went through five different selections mates.

6 He was the overwhelming choice by those selection
7 committees, especially the -- the community-based committees
8 that met that day. And so I think as we see this, yes, all
9 these positions are appointed by the mayor and confirmed by
10 the Council. But this is the selection that was made by
11 this community.

12 And let's remember where we've come in the last
13 four years. This -- the national expertise that Frank
14 Straub brought to our community, the programs, the
15 facilitation of the education and training of our senior
16 officers had never been at this level before. And so those
17 will continue.

18 And what's -- and what is exciting is just that
19 was an investment in our officers that we have not seen.
20 With the -- with the full allocation by the City Council, we
21 -- we allocated budget resources to the Police Division that
22 we hadn't seen in years that allowed us to invest in our
23 officers and allowed us -- you know, we're the only one that
24 we know of, maybe in the country, that's 40 hours of
25 critical incident training. And you've seen the dividends

1 that they've been paid. You know, we have had reduction in
2 use of force. We have better-trained officers to deal with
3 those that are in mental crisis. The story continues. The
4 youth programs that we've had. We were recognized by the
5 White House just a month ago.

6 As I traveled there with members of our community
7 and with the Chief and presented on some of those, of how we
8 were making true changes and -- and really growing those
9 programs, whether it be WPI or whether it be other
10 initiatives of engaging our youth. And I think our
11 community has seen that and will continue to see that
12 because that has spread throughout the entire Police
13 Division. Thank you very much.

14 REPORTER: Frank, can you answer some questions?

15 MR. STUCKART: Sure.

16 REPORTER: Who will be paying the Chief's salary
17 at the Attorney's Office? Will it still come from the
18 Police Department or the City Attorney's Office?

19 MR. STUCKART: Those details are still being
20 worked out at this point. We've really just gotten together
21 today, so we've got some work to do in figuring out the
22 details.

23 REPORTER: And also, you didn't really speak of
24 why the sudden adjournments, why did it just come together
25 today and why are we all gathered here with ten minutes'

1 warning?

2 MR. STUCKART: Well, I think it may feel sudden to
3 you, but this is something that's been going on and being
4 discussed. As we talked about, there have been some
5 conversations that have been going on for the past couple of
6 weeks that have occurred, and it came to a point where there
7 was a mutually-agreed upon decision that it was time for
8 everybody to move forward.

9 REPORTER: And Theresa Sanders described to me the
10 \$10,000 pay increase that Monique Cotton got as enticement,
11 to entice her to Rec and Parks, and the Mayor said it didn't
12 sound like it was an enticement. How do you reconcile what
13 Theresa Sanders says a month ago?

14 MR. STUCKART: So you're familiar with the step
15 system we have. Since she was close to the step -- to the
16 step increase, she was weeks away from her, you know, being
17 in a step increase. So that was factored in there.

18 Ms. Nadrich (phonetic) reported on -- I believe
19 also it included a bump that had been heard with the
20 resolution of the -- a contract, and a contract that got
21 ultimate -- everybody bumped in --

22 REPORTER: Why did she describe that as an
23 enticement, then?

24 MR. STUCKART: To me, it was part a step increase
25 to move her forward so she -- you know, she wanted to be

1 sure that for Monique's sake, that she was taking another
2 career advancement and moving forward in her career, taking
3 a job that was -- we just wanted to be sure that that would
4 be a good for her.

5 REPORTER: So there was other factors in her
6 \$10,000 pay increase and --

7 MR. STUCKART: No.

8 REPORTER: -- move to Parks?

9 MR. STUCKART: No.

10 (End of September 22, 2015 Press Conference)

CERTIFICATE

I, Marilyn J. Broyles, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true, and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any part to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of January, 2016.

/S/ Marilyn J. Broyles

CORRECTION SHEET

Transcript of: Transcription Date: 09/22/15
Regarding: Press Conference
Transcriber: Broyles

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet on the line provided.

Page Line Reason for Change

Print Name _____

Signature _____

DECLARATION

Transcript of: Transcription Date: 09/22/15
Regarding: Press Conference
Transcriber: Broyles

I declare under penalty of perjury the following to be true:

I have read my deposition and the same is true and accurate save and except for any corrections as made by me on the Correction Page herein.

Signed at _____,
on the _____ day of _____, 2016.

Print Name _____

Signature _____

EXHIBIT 3

CITY OF SPOKANE ETHICS COMMISSION ETHICS COMPLAINT FORM

Please review the City of Spokane's Code of Ethics - Chapter 1.04A SMC - before completing this complaint form. When you have completed this form, submit it to:
City of Spokane Ethics Commission
Attention: Rebecca Riedinger
Office of the City Attorney
5th Floor Municipal Building
W. 806 Spokane Falls Blvd.
Spokane, WA 99201
or at: riedinger@spokanecity.org

Pursuant to the City of Spokane's Code of Ethics, I am filing a complaint regarding conduct which I believe constitutes a violation of the City's Code of Ethics.

Name, position, and department of person(s) I believe to have violated the Code of Ethics:

Name: David Condon
Position: Mayor

Section of Code of Ethics violated:

What specific provision of SMC 1.04A.030 do you believe has been violated?

Section A - General Prohibition Against Conflicts of Interest: ...no current City officer shall have an interest that might be seen as adverse to the interests of the City.

Section B - Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

Describe in as much detail as possible the alleged Code of Ethics violation conduct. Attach additional sheets of paper, if necessary. Please include all documentation you believe demonstrates a violation. Your description should include the date, location and frequency of the alleged violation.

Regarding SMC 1.04A.030 - Section A:

Mayor David Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Braub against another city employee. This information was not made public until after David Condon had won re-election. The dishonesty by omission of the whole truth while campaigning for re-election constitutes an action adverse to the interests of the City by withholding information pertinent to voters.

The timing of these revelations present a clear conflict of interest since these allegations speak to David Condon's integrity in discharging the duties of the Mayor's Office in the eyes of Spokane's constituency.

Regarding SMC 1.04A.030 – Section N:
In public remarks on September 22 David Condon denied that any complaint of sexual harassment was made. This is blatant dishonesty relevant to Spokane voters in an election.

Names and positions of the persons who may have witnessed the event:

These allegations were made public by the Mayor's Office on Tuesday, November 24th, 2015.

Evidence or documentation

Please list any evidence or documentation that would support your allegation of a Code of Ethics violation. Indicate whether you can personally provide that information.

This evidence is public record in a city publication.

"Condon himself denied that any complaints of sexual harassment had been filed against the former chief when he announced Straub's departure on Sept. 22 [2015]. "The issue that you speak of, there has been no official filings of anything," -Mayor David Condon

<http://www.inlander.com/Bloglander/archives/2015/11/24/alleged-sexual-harassment-public-records-and-mayor-condons-re-election>

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that to the best of my knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true and correct.

JAMIE PENDLETON
Complainant's Signature

Date and Place (e.g. City, State)

11/30/2015

SPOKANE, WA

Name (please print):

JAMIE PENDLETON

Address:

P.O. BOX 1988 VERADALE WA 99037

Phone Number(s):

208-918-1045

E-Mail Address:

BABYFACE @ DS BABYFACE.COM

ETHICS COMMISSION MEETING OF JANUARY 13, 2016
MINUTES

This meeting was digitally recorded and an audio recording has been maintained.
Meeting was held in City Council Chambers.

Present: (There is a quorum.)

Alice Buckles, Member
Dennis Cronin, Member
Troy Bruner, Chair
Tyler Wasson, Member
Michael Piccolo, City Attorney's Office
Rebecca Riedinger, Staff Liaison

Media and Members of the community are present in the audience.

Prior Minutes are reviewed and approved by all.

FIRST MOTION

Troy: Motion to Approve Meeting Agenda

Levi- Seconds, All approve, Motion Carried

SECOND MOTION

Levi: Motion to Approve Minutes from prior meetings as there are no changes.

Tyler: Seconds, Dennis Abstains as he was not present, all others Approve, Motion Carried

THIRD MOTION

Dennis: Motion to Determine Definitions before proceeding any further – Wants to dismiss complaints w/. Prejudice to refile again.

Levi wants to go ahead despite Cronin's protests to determine jurisdiction.

Piccolo reminds him that the Commission has to deal with the first motion.

Dennis: Motion to Dismiss, or in the alternative, to carry over, the complaints in order to allow time to obtain definitions. No. Second. Motion dies.

FOURTH MOTION

PENDLETON COMPLAINT

In reviewing the Pendleton Complaint, Levi states the complaints appears proper in formatting/ signature, etc.

Dennis states he has problems with the second and fourth factors. Dennis states that he does not understand how we can move forward without having defined all the terms that they are supposed to be reviewing, for example, "dishonest" and "moral turpitude" How do we know what they mean without determining what definitions there are.

Troy states that this a Commission of citizens and, consequently we have to use our best judgment. Not every word or term is defined for us, so seems prudent to use the common definitions.

Levi notes that the next question would be if the act was committed, would it be a violation of the code.

Dennis states that the potential for the Mayor's recall stemming from their decision and the possible severity of the outcome, he finds it concerning that we would not seek to define the terms. The matters should be stayed. We need to have our decision stand up to the community's scrutiny.

Jamie Pendleton stands to the podium and tells Mr. Cronin, You are new. You have just been appointed, noting everyone should know the definitions of dishonesty.

Troy agrees, stating that we are getting off the rails.

Jim King stands at the podium and states that they have submitted documents in response and agrees with Dennis Cronin's analysis that he would like to have terms defined& stay their review.

Levi notes we haven't even determined jurisdiction, necessary to go forward. Troy states, Dennis, do you want to make a motion?

Dennis makes a motion the commission should determine the definitions of terms alleging dishonesty, moral turpitude – pending classification of what these terms mean. Piccolo notes that the state did not define the terms either.

Troy asks how we can accomplish anything in a timely manner. Doesn't seem practical.

Dennis asks how can they not define the terms, just to move forward quickly. Troy states that is not what he is saying. He is looking at it for the common good, the concerned citizens with a common sense point of view. He feels obligated to not get bogged down- not all the terms are defined.

Joe Shogan from the crowd yells that Cronin does not speak for him and he is a citizen.

Levi states that he still thinks regarding the definition of dishonesty- they could use some guidance. For example, even if Pendleton's complaint were true, there was no dishonesty.

Levi- Motion to Dismiss Complaint. There is No Second. Troy states he almost agreed to Motion, but it was not worded right. Levi says any damage was minimal.

Troy states, so lets Move to dismiss the Complaint, on the basis, that if it was committed any affect was de minimus.

Dennis Cronin abstains. All other approve. Motion carries 4 to 1. PENDLETON COMPLAINT DISMISSED.

FIFTH MOTION

JOE SHOGAN

Joe Shogan's complaint is determined to be proper/signed.

Levi moves to dismiss for lack of evidence, and, even if allegations were true, any damage would be de minimus.

Troy Seconds that Motion. Dennis says he won't vote, because he has already said he is abstaining.

No other votes. Motion does not carry.

Alice states she would like a review of the complaint listed in second page, item C, and all of D and E, excluding A, B and 1st paragraph – to Investigate it further, hold over to the next hearing. Troy seconds that Motion. Dennis abstains. Levi and Tyler agree. Motion carries. Matter carried over for hearing.

SIXTH MOTION

SPITZER

Levi motion to Dismiss. Seconded by Alice. Dennis abstains. All others in favor. Motion carries. Spritzer matter is dismissed.

MJP reminds there is King's Motion for Additional time.

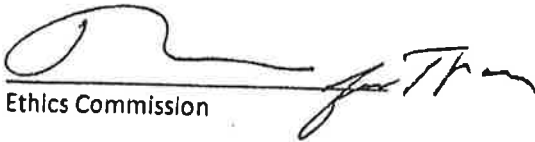
Dennis moves the commission accept that Motion and Levi Seconds. All in Favor. Motion for more time is approved.

SEVENTH MOTION

Teresa Simon- Matter No. 1 only

Troy moves to dismiss. Levi seconds. Dennis abstains All others agree Motion carries.

Minutes review and approved this 24th day of February, 2016.


Ethics Commission

CITY OF SPOKANE ETHICS COMMISSION

Ethics Commission's Findings, Conclusions and Decision Regarding Complaint filed by Jamie Pendleton Against David Condon

FINDINGS

The Ethics Commission makes the following findings:

1. On or about November 30, 2015, Jamie Pendleton filed an ethics complaint against David Condon.
2. The complaint alleges that Mr. Condon violated SMC 1.04A.030 (A) of the Code of Ethics regarding prohibition against conflicts of interest whereby a City officer or employee has an interest that might be seen as adverse to the interest of the City. The complaint alleges that Mr. Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Straub against another city employee until after Mr. Condon won re-election and that this dishonesty by omission constitutes an action adverse to the interest of the City by withholding information pertinent to voters.

The complaint further alleges that Mr. Condon violated SMC 1.04.030 (N) of the Code of Ethics regarding prohibition against commissions of acts of moral turpitude or dishonesty. The complaint alleges that Mr. Condon's denial of any complaint of sexual harassment being made was blatant dishonesty relevant to the Spokane voters in an election.

3. On December 29, 2015, Mr. Condon, through his attorney, submitted Motion for Dismissal of the ethics complaint pursuant to SMC 1.04A.110 (D) (1) (b) on the basis that the Ethics Commission lacks jurisdiction. The Motion asserts that the alleged conduct does not constitute a violation of SMC 1.04A.030 (N) and should be dismissed pursuant to SMC 1.04A.110 (D) (1) (b).
4. On January 13, 2016, the Ethics Commission held a meeting to review the complaint to determine whether, pursuant to SMC 1.04A.110 (D) (1) and (2), the Commission had jurisdiction to conduct further proceedings and whether the complaint, on its face, alleges facts that, if true, would substantiate a violation.
5. At the January 13, 2016 Commission meeting, the Commission considered the November 30, 2015 complaint filed by Mr. Pendleton, the December 29, 2015 Motion to Dismiss filed by Mr. Condon's attorney, the

testimony submitted by the parties at the hearing and the deliberation of the Commission members.

CONCLUSION

The Ethics Commission makes the following conclusions:

The complaint met the requirements of SMC 1.04A.110 regarding the signed written complaint form, cites to a provision of the Code of Ethics and asserts an alleged violation against a City official who is subject to the Code of Ethics. The complaint, however, asserts facts, that even if true, potentially would not constitute a violation of the Code of Ethics or would be a de minimus violation.

DECISION

Based upon the Findings and Conclusions set forth above and the deliberation of the Ethics Commission, the Ethics Commission concludes that the complaint by Mr. Pendleton is dismissed pursuant to SMC 1.04A.110 (D) (1)(c) on the basis that the alleged violation is a minor or de minimis violation.

This decision was approved by a vote of four to one of the Ethics Commission members present for and participating in the hearing with Commissioner Cronin voting no on the basis that the Commission needed a definition of the terms "moral turpitude" and "dishonesty," as set forth in SMC 1.04A.110 (N), in order to determine jurisdiction. Commissioner Cronin's motion to stay the proceedings pending a clarification of these terms or, in the alternative, to dismiss the complaints without prejudice failed for a lack of a second.

 1-27-16
Troy Bruner - Chairperson Date

EXHIBIT 4

RECEIVED

DEC 08 2015

CITY CLERK'S OFFICE

CITY OF SPOKANE ETHICS COMMISSION

ETHICS COMPLAINT FORM

Please review the City of Spokane's Code of Ethics – Chapter 1.04A SMC – before completing this complaint form. When you have completed this form, submit it to:

RECEIVED

DEC 08 2015

OFFICE OF THE CITY ATTORNEY

City of Spokane Ethics Commission
Attention: Rebecca Riedinger
Office of the City Attorney
5th Floor Municipal Building
W. 808 Spokane Falls Blvd.
Spokane, WA 99201

or at: rriedinger@spokanecity.org

Pursuant to the City of Spokane's Code of Ethics, I am filing a complaint regarding conduct which I believe constitutes a violation of the City's Code of Ethics.

Name, position, and department of person(s) I believe to have violated the Code of Ethics:

Name: David Condon

Position/Title: Mayor

Nature of Code of Ethics violation:

What specific provision of SMC 1.04A.030 do you believe has been violated?

Section A - General Prohibition Against Conflicts of Interest
... no current city officer shall have an interest that might be seen as adverse to the city interests of the city.
Section N - Commission of Acts of Moral Turpitude or Dishonesty Prohibited.

Describe in as much detail as possible the alleged Code of Ethics violation conduct.

Attach additional sheets of paper, if necessary. Please include all documentation you believe demonstrates a violation. Your description should include the date, location and frequency of the alleged violation.

Spitzer / Condon ¹

2015-12

Regarding SMC 1.04A.030 - Section N: In public remarks on September 22, 2015 David Condon denied that any complaint of sexual harassment was made. This is blatant dishonesty relevant to Spokane voters in an election.

Regarding SMC 1.04A.030 - Section A: Mayor David Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Straub against another city employee. This information was not made public until after David Condon had won re-election. The dishonesty by omission of the whole truth while campaigning for re-election constitutes an action adverse to the interests of the city by withholding information pertinent to voters. The timing of these revelations present a clear conflict of interest since these allegations spoke to David Condon's integrity in discharging the duties of the Mayor of Spokane. Names and positions of the persons who may have witnessed the event: office in the eyes of Spokane's constituency.

These Allegations were made public by the Mayor's Office on Tuesday, November 24th, 2015

Evidence or documentation

Please list any evidence or documentation that would support your allegation of a Code of Ethics violation. Indicate whether you can personally provide that information.

This evidence is public record in a city publication.
"Condon himself denied any complaints of sexual harassment had been filed against the former chief when he announced Straub's departure on Sept. 22, 2015. The issue that you speak of, there has been no official filings of anything Mayor David Condon.

Complainant Declaration

I declare under penalty of perjury of the laws of the State of Washington that to the best of my knowledge, information, and belief formed after reasonable reflection, the information in the complaint is true and correct.

Mara Spitzer
Complainant's Signature

December 8th, 2015
Date

Date and Place (e.g. City, State)

Spokane, WA

Name (please print): Mara Spitzer

Address: 1010 S. Rockwood Blvd. #316

Phone Number(s): 509-565-0418

E-Mail Address: mara.spitzer@gmail.com

CITY OF SPOKANE ETHICS COMMISSION

Ethics Commission's Findings, Conclusions and Decision Regarding Complaint filed by Mara Spitzer Against David Condon

FINDINGS

The Ethics Commission makes the following findings:

1. On or about December 8, 2015, Mara Spitzer filed an ethics complaint against David Condon.
2. The complaint alleges that Mr. Condon violated SMC 1.04A.030 (A) of the Code of Ethics regarding prohibition against conflicts of interest whereby a City officer or employee has an interest that might be seen as adverse to the interest of the City. The complaint alleges that Mr. Condon knowingly withheld allegations of sexual harassment by former Police Chief Frank Straub against another city employee until after Mr. Condon won re-election and that this dishonesty by omission constitutes an action adverse to the interest of the City by withholding information pertinent to voters.

The complaint further alleges that Mr. Condon violated SMC 1.04.030 (N) of the Code of Ethics regarding prohibition against commissions of acts of moral turpitude or dishonesty. The complaint alleges that Mr. Condon's denial of any complaint of sexual harassment being made was blatant dishonesty relevant to the Spokane voters in an election.

3. On December 29, 2015, Mr. Condon, through his attorney, submitted Motion for Dismissal of the ethics complaint pursuant to SMC 1.04A.110 (D) (1) (b) on the basis that the Ethics Commission lacks jurisdiction. The Motion asserts in part that complaint fails to state a claim under 1.04A.030 A and that allegations concerning a violation of SMC 1.04A.110 A are impermissible under both the Washington State and U.S. constitutions because of its chilling effect on fundamentally political public activity and free speech activity.
4. On January 13, 2016, the Ethics Commission held a meeting to review the complaint to determine whether, pursuant to SMC 1.04A.110 (D) (1) and (2), the Commission had jurisdiction to conduct further proceedings and whether the complaint, on its face, alleges facts that, if true, would substantiate a violation.
5. At the January 13, 2016 Commission meeting, the Commission considered the December 8, 2015 complaint filed by Ms. Spitzer, the

December 29 , 2015 Motion to Dismiss filed by Mr. Condon's attorney, the testimony submitted by the parties at the hearing and the deliberation of the Commission members.

CONCLUSION

The Ethics Commission makes the following conclusions:

The complaint met the requirements of SMC 1.04A.110 regarding the signed written complaint form, cites to a provision of the Code of Ethics and asserts an alleged violation against a City official who is subject to the Code of Ethics. The complaint, however, fails to describe the facts that constitute the violation of the Code of Ethics in sufficient detail to enable the Commission and the respondent to reasonably be expected to understand the nature of the office that is being alleged pursuant to SMC 1.04A.110 (C).

DECISION

Based upon the Findings and Conclusions set forth above and the deliberation of the Ethics Commission, the Ethics Commission concludes that the complaint by Ms. Spitzer is dismissed pursuant to SMC 1.04A.110 (D) (1) (a) on the basis that the Commission lacks jurisdiction due to the Complainants failure to describe the facts that constitute the violation of the Code of Ethics in sufficient detail to enable the Commission and the respondent to reasonably be expected to understand the nature of the office that is being alleged, pursuant to SMC 1.04A.110 (C).

This decision was approved by a vote of four to zero of the Ethics Commission members present for and participating in the hearing with Commissioner Cronin abstaining on the basis that the Commission needed a definition of the terms "moral turpitude" and "dishonesty," as set forth in SMC 1.04A.110 (N), in order to determine jurisdiction. Commissioner Cronin's motion to stay the proceedings pending a clarification of these terms or, in the alternative, to dismiss the complaints without prejudice failed for a lack of a second.



Troy Bruner - Chairperson Date

EXHIBIT 5

BALLOT SYNOPSIS OF RECALL CHARGES

David Condon

Mayor of City of Spokane

The charges that David Condon, as Mayor of City of Spokane, committed misfeasance, malfeasance, and/or violated his oath of office allege:

(1) The City of Spokane received a public records request on August 18, 2015 and six additional public records requests between September 5, 2015 and October 20, 2015 for public records relating to Frank Straub and Monique Cotton. Mayor Condon violated the Public Records Act by intentionally withholding certain public records until after the Mayor's re-election.

(2) Mayor Condon violated the Spokane Code of Ethics when he untruthfully said "no" at the September 22, 2015 press conference in response to the question "Were there any sexual harassment complaints lodged against Frank [Straub]?"

(3) On August 1, 2016, Mayor Condon announced Craig Meidl's appointment as Chief of Police. Mayor Condon violated the Spokane Municipal Code and Charter by not submitting the appointment of Craig Meidl to the Spokane City Council.

(4) Beginning in April, 2015, Mayor Condon failed to follow Spokane and Spokane Police Department policies with respect to the sexual harassment claim by Monique Cotton, resulting in direct financial loss to the taxpayers and citizens of Spokane.

Should David Condon be recalled from office based on any of these charges?

EXHIBIT "C"



SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

(Clerk's Date Stamp)

IN THE MATTER OF:

THE RECALL OF DAVID CONDON,
Mayor of the City of Spokane

CASE NO. 16-2-03395-9

ORDER
(OR)

I. BASIS

On August 16, 2016, David Green filed with the Spokane County Auditor a Statement of Charges in Support of the Recall of Spokane Mayor David Condon. The Auditor referred the Statement of Charges to the Spokane County Prosecutor, who, on August 29, 2016, filed it with the Spokane County Superior Court, along with a Petition to Determine Sufficiency of Recall Charges and for Approval of Ballot Synopsis. A hearing was held on the Petition on September 13, 2016.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

NONE OF THE CHARGES ARE BOTH
FACTUALLY AND LEGALLY SUFFICIENT.

III. ORDER

IT IS ORDERED that:

This matter is dismissed.

Dated: September 13, 2016



Judge Blaine G. Gibson

EXHIBIT 6

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

IN THE MATTER OF THE)
RECALL OF:)
) Cause No. 16-2-03395-9
DAVID CONDON,)
Mayor of the City of)
Spokane.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 13th day of
September, 2016, the above-entitled cause came on for
hearing before the Honorable Blaine G. Gibson, Judge, from
the Yakima County Superior Court, sitting in the Spokane
County Superior Court.

A P P E A R A N C E S

FOR THE RECALL DAVID
CONDON COMMITTEE: DAVID GREEN, PRO SE
 Post Office Box 3973
 Spokane, Washington 99220-3973

FOR DAVID CONDON: JAMES B. KING, ESQ.
 MARKUS W. LOUVIER, ESQ.
 Evans, Craven & Lackie, P.S.
 250 Lincoln Building
 818 West Riverside Avenue
 Spokane, Washington 99201

1 AFTERNOON SESSION

2 (September 13, 2016; 1:30 p.m.)

3
4 THE BAILIFF: All rise. Court is now in session.

5 THE COURT: Please be seated. Good afternoon.

6 MR. KING: Afternoon, Your Honor.

7 THE COURT: Give me a moment here to get situated.

8 This is the Matter of the Recall of David Condon,
9 16-2-03395-9. And you would be Mr. Green?

10 MR. GREEN: Yes, Your Honor.

11 THE COURT: Who do I have that's going to be arguing
12 on behalf of the mayor?

13 MR. KING: May it please the Court. I'm Jim King, and
14 I'll be arguing. Also in court unless needed to respond to
15 the Court's questions, will not be arguing, is Mr. Louvier
16 from my office, who is my law partner.

17 THE COURT: Okay. Let me start with a few preliminary
18 remarks just so the public knows where we are on this.

19 The Statement of Charges in Support of Recall was
20 filed by Mr. Green on August 16. The prosecutor reviewed
21 those materials and filed them with the Superior Court on
22 August 29 along with the proposed ballot synopsis.

23 Within 15 days after the filing by the prosecutor, the
24 law requires the Superior Court to hold a hearing and
25 determine the sufficiency of the statement of charges.

1 Elected officials in Washington may be recalled for
2 malfeasance, misfeasance and violation of oath of office.
3 The court acts as a gateway to ensure that only charges
4 that are factually and legally sufficient are placed before
5 the voters. The court does not evaluate the truthfulness
6 of those charges. The requirement of factual sufficiency
7 assures that charges, although adequate on their face, do
8 not constitute grounds for recall unless supportable by
9 identifiable facts.

10 The requirement of legal sufficiency protects an
11 elected official from being subjected to the financial and
12 personal burden of a recall election grounded on false or
13 frivolous charges. To be factually sufficient the charges
14 must state the act or acts complained of in concise
15 language, give a detailed description including the
16 approximate date, location and the nature of each act
17 complained of, be signed by the person or persons making
18 the charge, give the respective post office addresses, and
19 be verified under oath that the person or persons believe
20 the charge or charges to be true and have knowledge of the
21 alleged facts upon which the stated grounds for recall are
22 based.

23 The petition must describe the charges with sufficient
24 precision and detail to enable the electorate and the
25 challenged official to make informed decisions in the

1 recall process. Charges are factually sufficient to
2 justify recall when taken as a whole they state sufficient
3 facts to identify to the electors and to the official being
4 recalled acts or failures to act which without
5 justification could constitute a prima facie showing of
6 misfeasance.

7 In the recall context the words or the term "prima
8 facie" means that accepting the allegations as true, the
9 charges on its face support the conclusion that the
10 official committed misfeasance, malfeasance or a violation
11 of the oath of office.

12 For the purposes of recall efforts, "misfeasance" or
13 "malfeasance" in office means any wrongful conduct that
14 affects, interrupts, or interferes with the performance of
15 official duty. Additionally, "misfeasance" in office means
16 the performance of a duty in an improper manner; and,
17 additionally "malfeasance" in office means the commission
18 of an unlawful act. "Violation of the oath of office"
19 means the neglect or knowing failure of an elective public
20 officer to perform faithfully a duty imposed by law.

21 "Legal sufficiency" means that a petition must
22 specifically state substantial conduct clearly amounting to
23 misfeasance, malfeasance or violation of the oath of
24 office. However, it has been held that a charge is not
25 legally sufficient if the conduct is insubstantial or if

1 the elected official acted with a legal justification.

2 Additionally, discretionary acts of a public official
3 are not a basis of recall insofar as those acts are an
4 appropriate exercise of the discretion by the official in
5 the performance of his or her duties. When an official is
6 charged with violating the law, there must be evidence
7 presented that leads to the conclusion that the public
8 official intended to commit an unlawful act.

9 Now let me -- I tried to summarize the ground rules
10 that we're operating under here. I want to know if anybody
11 feels I have in any way misstated those rules.

12 Mr. Green?

13 MR. GREEN: Your Honor, the only potential issue I had
14 was the subject of a filing. Unfortunately, yesterday
15 morning with respect to the change in law in 2003 by the
16 state legislature with respect to violation of oath of
17 office where the definition of violation of oath of office
18 was changed from "willful neglect and failure" to simply
19 "neglect and knowing failure." To the best of my knowledge
20 the Supreme Court has not addressed the issue of what the
21 removal of the word "willful" means that intent is no
22 longer not required with respect to the violation of the
23 oath of office.

24 I agree that intent is required with misfeasance and
25 malfeasance.

1 THE COURT: I'm aware of that. I reviewed those
2 materials.

3 Mr. King?

4 MR. KING: I think the Court has correctly outlined
5 the law that applies to the matter.

6 THE COURT: Okay. This hearing is solely for the
7 purpose of evaluating the factual and legal sufficiency of
8 the petition. It is not a trial. The court is not to
9 weigh the evidence or make any factual determination. Both
10 sides have had an opportunity to brief the issues. I
11 operate under the assumption that in their briefs they have
12 made all of the arguments they intend to make. For this
13 reason, I might not ask for comment or argument from the
14 parties on some issues.

15 We have a preliminary issue, and that is the objection
16 filed on behalf of the mayor to the materials Mr. Green
17 filed yesterday, which I received about five minutes to
18 noon yesterday. I think it is clear those, to the extent
19 those materials sought to add anything to the petition, the
20 filing is untimely. In a case like this the moving party
21 must file the materials he intends to rely upon with the
22 Statement of Charges. He cannot bring them in at the last
23 minute when neither the opposing parties or the Court has
24 had any fair opportunity to review them.

25 As far as the case law that Mr. Green had cited, that

1 is -- I'd already read those cases before he sent them to
2 me anyway. It doesn't make any difference. So the
3 objection is sustained. And to that -- as I said -- to the
4 extent those materials Mr. Green submitted yesterday
5 contained any additional supporting materials for the
6 petition, I will not consider them.

7 MR. GREEN: Your Honor, may I ask a question?

8 THE COURT: Go ahead.

9 MR. GREEN: To the extent that the recall petition
10 made reference to materials that were submitted in detail,
11 for example, if it was a statute or something like that
12 where the materials were -- the statute was submitted
13 yesterday morning -- if the recall petition made reference
14 to that statute, is it permissible to refer to that statute
15 if it was in the recall petition itself?

16 THE COURT: Mr. King?

17 MR. KING: Your Honor, our position is obviously the
18 court is deemed to be aware of, and I'm sure this Court is
19 aware of the applicable statutes and case law that apply to
20 this matter. So that isn't our objection; we're mindful of
21 the Court's ruling.

22 The only thing I would add for the record is that the
23 issue of counsel -- or Mr. Green's explanation for the late
24 filing should not go without remark. His excuse for the
25 late filing was he got a letter too late. He -- in a total

1 lack of candor to this tribunal, he fails to advise the
2 tribunal or counsel in his papers that he was specifically
3 notified by the court administrator's office on September
4 8th when his materials were due and voiced no objection to
5 that deadline, and then made up an excuse when he filed
6 late on Monday.

7 That mendacity, that lack of candor, should not go
8 unremarked.

9 THE COURT: As I said, the principle here is that the
10 person who files the charges has to include in with the
11 charges the -- at least the factual materials upon which
12 the party intends to rely. As far as the legal materials,
13 the statutes, so on, again, I don't have a problem with
14 that because I'd already read the statutes before I
15 received the filing anyway. But it is the factual
16 materials that I'm concerned about.

17 So --

18 MR. GREEN: Your Honor?

19 THE COURT: Yes.

20 MR. GREEN: I did in my letter of yesterday apologize
21 to the Court as well as counsel. As I am not licensed to
22 practice law in Washington State, I did not fully
23 understand that the Friday 4:00 p.m. deadline applied to
24 the petitioner as well as the respondent. It was simply my
25 understanding that it was the deadline for the respondent.

1 I don't believe there is mendacity involved. I do
2 believe there's a simple misunderstanding. And I was truly
3 surprised when the letter indicated that I could provide
4 additional documentation. So I do apologize to the Court.

5 THE COURT: All right.

6 The first issue involves public records requests. The
7 City of Spokane received a public records request on
8 August 18, 2015, and six additional public records requests
9 between September 5, 2015 and October 20, 2015 for public
10 records related to Frank Straub and Monique Cotton.

11 The question is whether Mayor Condon violated the
12 Public Records Act by personally withholding certain public
13 records until after the mayor's re-election.

14 Mr. Green, let me ask you, this charge is based --
15 entirely on the Seabold Reports, is it not?

16 MR. GREEN: Yes, Your Honor.

17 THE COURT: Okay. And when you filed the charge, did
18 it include -- did what you filed include the appendices and
19 exhibits and transcripts that are referred to in the
20 Seabold Report?

21 There is a number of citations throughout the report
22 to certain exhibits or certain pages of transcripts. Were
23 those included in what you filed?

24 MR. GREEN: What I filed, Your Honor, was the
25 Seabold -- my understanding was what we're referring to as

1 the Seabold Reports are in fact summary reports, although
2 at 126 pages long it is hard to imagine they are a summary.

3 But my petition was focusing on the 126-page report as
4 well as the appendices that were included with the recall
5 petition. I did not intend at the time to incorporate by
6 reference all the underlying documents that were referred
7 to.

8 THE COURT: By "appendices" you're referring to --

9 MR. GREEN: I was referring to the petitioner's
10 appendices, A through Z.

11 THE COURT: Those would be the media articles --

12 MR. GREEN: The contemporaneous news articles, the
13 publication from the organization that specializes in the
14 Public Records Act, and other such materials, which I had
15 read contemporaneously.

16 THE COURT: Well, Mr. Green, clearly you had no
17 personal knowledge of the events in question on this issue.
18 So really the issue is whether you can rely on the Seabold
19 Report to support your request for a recall election.

20 Factual sufficiency requires the recall petitioner to
21 have more than a simple belief that the charges are true.
22 So we get to the Seabold Report and Ms. Cappell, the author
23 of the report, also had no personal knowledge of the
24 pertinent events. She drew conclusions from interviewing
25 witnesses and examining documents.

1 She also refers to the report as being "a summary."
2 And I looked at that and my first -- I first wondered, does
3 this mean there is a longer report someplace and this is a
4 summary of that report? As I reread things, my
5 understanding of her use of the term, as much as I could
6 glean it from the report, was that she meant -- when she
7 used the term "summary" she meant it was a summary of the
8 information that she had gathered in the course of her
9 investigation. And that information would be contained in
10 the various documents that she had reviewed and the
11 transcripts of the witness interviews, and so on.

12 But that -- that is where there is a problem.
13 Because, again, the Court is to determine the sufficiency
14 of the petition as it was filed. The petition did not
15 include the transcripts, the exhibits and appendices
16 referred to in the report.

17 Of particular interest would be Appendix B which was
18 referred to by Ms. Cappell, she referred to it as many of
19 the key documents. I don't know what those key documents
20 were.

21 What we're left with, here, Mr. Green, is you believe
22 the charge is true because Ms. Cappell believes it is true,
23 at least that is what she said in her first version of the
24 report.

25 Without the documents and the transcripts that would

1 support Ms. Cappell's beliefs, nobody reading the petition
2 can know how reasonable her conclusions are because they
3 don't have any more information than you had as a person
4 charging the -- filing the charge.

5 So I think the -- with regard to this issue the
6 petition fails because it is factually insufficient. It
7 does not contain the information that the electorate and
8 the elected official would need to know specifically how
9 the conclusion was reached that the mayor had intentionally
10 withheld documents from the public records request.

11 So I find this charge is factually insufficient.

12 I want to make it clear I am not making any decision
13 on whether or not the petition would have been factually
14 sufficient if the appendices and the exhibits and the
15 transcripts would have been included with the petition in
16 the filing.

17 All right. Issue number two is the one about the
18 question answered by the mayor. Another way to state it
19 is, did Mayor Condon violate the Spokane Code of Ethics
20 when he said "no" at the September 22, 2015 press
21 conference in the response to the question: "Were there
22 any sexual harassment complaints lodged against Frank?"
23 The answer to that question: "No."

24 So, Mr. Green, is there a difference between lodging a
25 complaint and making a complaint or complaining?

1 MR. GREEN: Your Honor, the question -- my
2 understanding of the question that was asked of the mayor
3 at the time was were there any complaints that were
4 associated with the -- with Ms. Cotton and Police Chief
5 Straub. And so the word "any" doesn't matter whether it is
6 formal or informal. And the mayor responded to that
7 question "no."

8 THE COURT: Well, my understanding of the question as
9 it was quoted in the materials was, "Were there any sexual
10 harassment complaints lodged." And it is the word "lodged"
11 that I'm concerned about; not made, but lodged. I'm trying
12 to ascertain whether there is a substantive difference
13 between lodging a complaint and making a complaint.

14 MR. GREEN: Certainly their record indicates in the
15 Cappell report that complaints had been filed, and there
16 were significant meetings having gone on in April 2015 with
17 respect to the mayor and his team and Chief Straub and
18 Monique Cotton and her attorney.

19 So I equate the word "lodge" to not be filed in a
20 formal sense, but in the word made or raised.

21 THE COURT: All right. But the issue here is --

22 First of all let me make sure, am I correct that the
23 actual question that was asked was about complaints having
24 been lodged?

25 MR. GREEN: Yes, Your Honor. As reflected in the

1 Cappell report, the word "lodged" was used.

2 THE COURT: All right. Well, again, the problem is
3 one of semantics.

4 I think that most people would understand the words --
5 the word "lodged" to refer to something more formal than
6 simply complaining. And my understanding is that the only
7 complaint at that point that had been made was by
8 Ms. Cotton, and that was made orally; correct?

9 MR. GREEN: Yes, Your Honor.

10 THE COURT: Okay. So it is a question of whether at
11 the time he answered the question, would it be dishonest of
12 him to say no if he's asked --

13 Let me rephrase the question.

14 Had he been asked had Ms. Cotton lodged a complaint
15 against Frank Straub, should the mayor have understood that
16 to mean had she complained about Frank Straub or should the
17 mayor have understood that to mean had she made some kind
18 of formal complaint or -- again, we get back to the word
19 what does "lodge" mean.

20 MR. GREEN: Yes, Your Honor. It may be helpful to
21 understand in the transcripts or in the materials from the
22 Cappell report it was clear towards roughly pages 95
23 towards the end is where the sexual harassment claims were
24 discussed, the investigator took considerable pains to talk
25 with Heather Lowe, who is the HR person for the City, and

1 another HR person for the City, where they said it was
2 common there would be more informal complaints than formal,
3 and that sometimes those informal complaints were simply
4 someone stopping by and talking to somebody at a desk, and
5 the City regarded that as a complaint and acted upon it.

6 So -- so when the word "lodged" is used, is it in the
7 sense of did someone come forth and cause a complaint,
8 whether it be verbal, informal, formal or written.

9 In this particular case the mayor has more indicated
10 that he did not consider that a complaint had been lodged
11 because nothing formal was filed. But the Cappell report
12 clearly indicates that significant activities, including
13 transferring Ms. Cotton at her and her attorney's request
14 to the Park Board was in response to her complaint against
15 Chief Straub.

16 THE COURT: Does it make any difference that she had
17 specifically said that she did not want to file a
18 complaint, she did not want to have an investigation made,
19 and she wanted her oral complaint to remain confidential?
20 Does that make a difference in terms of how the mayor
21 should have answered that question?

22 MR. GREEN: The duty of the mayor is to enforce the
23 laws of the City of Spokane as recognized in the charter
24 under Section 24J. In this particular case he's to
25 faithfully enforce the laws. And the issue -- And in

1 addition to in the transcript it was clear that in the
2 context of the press conference that from the summer of
3 2015 on, rumors were circulating throughout the police
4 department, throughout the city, investigators documented
5 those rumors with respect to a sexual -- potential sexual
6 relationship between Ms. Cotton and Chief Straub.

7 Further, the investigator documented that it was in
8 the midst of an election season. And when the police
9 chief's resignation was announced on September 22nd, I
10 believe it was unclear by Mayor Condon's comments that he
11 was afraid if he had said yes, everything would blow up
12 just before the election. Instead it blew up after the
13 election, when on November 24 the records requests that
14 were finally released indicated that there had been
15 significant HR concerns with Ms. Cotton and Chief Straub.

16 THE COURT: You are relying upon the Seabold Report.
17 Doesn't the Seabold Report specifically find that there was
18 no connection between Ms. Cotton's complaint about
19 Mr. Straub, Chief Straub, and the decision to terminate
20 him?

21 MR. GREEN: The investigator found in fact that there
22 was no evidence of sexual harassment by Chief Straub of
23 Ms. Cotton, that's correct.

24 THE COURT: Okay. So, again, we get back to this
25 question of is there a difference between the question did

1 Ms. Cotton lodge a complaint against Chief Straub versus
2 did Ms. Cotton complain about Mr. Straub.

3 That is really where we are; right?

4 MR. GREEN: Yes.

5 THE COURT: My concern about this is that I don't
6 think a recall should be based upon a dispute over
7 semantics because, again, I can certainly understand where
8 -- particularly when there is a formal process that can be
9 followed, the City -- the City's anti-harassment policy
10 specifically talks about the process of making complaint,
11 and says it can be made in writing or some other way. And
12 it is kind of vague language about exactly if it is not
13 made in writing how is it made, and it is a little unclear.

14 But given the context, I don't think it's legally
15 sufficient to say -- even assuming everything that you are
16 saying is true, that the mayor -- I don't think there is a
17 dispute about the fact the mayor said "no" in answer to the
18 question about the complaint being lodged, but the question
19 is, is that necessarily dishonest? And I don't think it
20 is, necessarily. I don't know what was going on in his
21 head.

22 MR. GREEN: Uh-huh.

23 THE COURT: But I certainly understand that many
24 people -- I think most people would treat the two questions
25 differently or understand the questions differently,

1 whether a complaint was "lodged" versus whether somebody
2 complained about somebody.

3 As I said, I don't think the recall petition should be
4 based on disagreements over semantics. So I find that
5 recall charge is insufficient.

6 MR. GREEN: Your Honor, may I -- may I be able to ask
7 a question about your conclusion with respect to question
8 number one, charge number one?

9 THE COURT: Sure.

10 MR. GREEN: I'm having difficulty reconciling the case
11 In re Recall of West, where the petitioner in that case,
12 Shannon Sullivan, read about the mayor's interaction with
13 the undercover agents in the newspaper, and the first-hand
14 knowledge that the Supreme Court of Washington indicated in
15 that particular case that first-hand knowledge was not
16 required. It was based on general knowledge of the
17 petitioner having read the transcripts in the newspaper.

18 I'm having difficulty reconciling that to the issue of
19 having knowledge of the situation with respect to charge
20 number one by reading a report that was commissioned by the
21 City of Spokane to an investigator firm who spent
22 approximately six to seven months, interviewed 43 witnesses
23 and read thousands of e-mails.

24 And I would appreciate some guidance from the Court as
25 to how In re Recall of West is differentiated from Your

1 Honor with respect to your ruling on charge number one.

2 THE COURT: My recollection of that case, wasn't that
3 a question of when the transcripts -- the record that the
4 transcripts had been read by the petitioner; right?

5 There wasn't a question about the transcripts being
6 accurate.

7 MR. GREEN: Yeah. In this case the factual basis for
8 the allegation is drawn almost entirely from the
9 transcripts of internet chats published in the newspapers.
10 Sullivan and the community are aware of the sources of the
11 allegations and far better able to judge their credibility.

12 THE COURT: The problem here is, the conclusions
13 reached by Ms. Cappell in the Seabold Report don't quote
14 necessarily from the transcripts. They refer to the
15 transcripts, but they are not quoted. And again, somebody
16 reading her report has no way of knowing exactly what the
17 witness said.

18 Whereas in the West case there wasn't any question
19 that the transcript had been accurately reported. I think
20 that case the issue was more could -- was it appropriate to
21 rely upon media reports. I think that was the particular
22 issue the court was addressing at that point.

23 Am I mistaken on that?

24 MR. GREEN: Well, there were -- it differentiated In
25 re Recall of Beaseley (phonetic) where there were unnamed

1 sources in submitted newspaper articles. In this
2 particular case there were -- with respect to West, the
3 newspaper articles quoted transcripts, but they basically
4 were a third-party account of what had happened, because I
5 don't think there was any verification that the transcripts
6 were in fact verbatim. I'm not saying that they weren't.
7 But there was -- similar to the Cappell report, you know,
8 the City commissioned a -- investigator who had 11 years of
9 legal experience, was a former federal prosecutor, as well
10 as in solo practice who had joined a respected
11 investigative firm, and I'm a little bit discomforted by
12 the fact that the City of Spokane spent over \$120,000
13 apparently on a report that apparently the Court does not
14 believe it could rely on.

15 THE COURT: Well, I didn't say I couldn't rely on the
16 report. I said I would need to see the whole report. You
17 chose not to file the appendices and other materials that
18 are referred to in the report.

19 MR. GREEN: To --

20 THE COURT: That is why I don't have them.

21 MR. GREEN: To the best of my knowledge, Your Honor,
22 they were not readily available to the public. I do not
23 know if under the records request they were, but I did not
24 see them readily available.

25 THE COURT: I know nothing about that because it is

1 not in the filing. I assume -- I just assumed when there
2 is a report that is referring to appendices, that the
3 appendices would have been included in the report that was
4 filed with the City. Maybe I shouldn't have made that
5 assumption.

6 But in the West case there was a report, but -- and
7 there was certainly some reliance on that report. The
8 issue of whether the report was complete as to whether it
9 included the appendices, transcripts, so on that were
10 referred to the report, wasn't addressed in the case.

11 So, again, I don't know what happened in that case,
12 whether that report was complete as it was filed with the
13 petition, and that is the problem I have is that there
14 clearly were materials that Ms. -- is it pronounced
15 Cappell?

16 MR. GREEN: I do not know, Your Honor. Perhaps
17 someone else does.

18 THE COURT: Again, I assume those materials were filed
19 with the report and would be available and could have been
20 filed with the petition. And that would be then -- make it
21 possible for the court, the electorate, the mayor, to find
22 out where the information came from that she was relying
23 upon in reaching her conclusion.

24 And I think that is particularly important with regard
25 to that first issue because of the fact that she filed one

1 report where she concluded that the mayor had withheld
2 materials until after the election. Then the next day she
3 files her report withdrawing those contentions. Again,
4 there is an issue about her understanding of proof by a
5 preponderance of the evidence and her understanding of
6 circumstantial evidence and validity of it.

7 But without seeing the supporting materials, one
8 cannot know why she may have changed her mind. Again, I
9 think that further complicates the matter. And it could
10 have been cleared up by simply filing the materials. I
11 think that is --

12 MR. GREEN: Thank you, Your Honor.

13 To the best of my knowledge the only portion of the
14 report that was released for public consumption was the 126
15 pages that were submitted with the petition.

16 THE COURT: Again, that is the first I have heard of
17 that.

18 Issue number three has to do with Craig Meidl. Am I
19 pronouncing that correctly, Meidl?

20 MR. KING: You are, Your Honor.

21 THE COURT: Issue three: On August 1, 2016 Mayor
22 Condon announced Craig Meidl's appointment as chief of
23 police. The issue is whether Mayor Condon violated the
24 Spokane Municipal Code by not submitting the appointment of
25 Craig Meidl to the Spokane city council.

1 Mr. Green, it appeared to me, and you correct me if
2 I'm wrong, that your charge in this case is based solely on
3 the media articles that you attached to your petition.

4 Is that correct?

5 MR. GREEN: Your Honor, my first-hand knowledge comes
6 from what was reported in the press, that is correct.

7 THE COURT: Okay. And is there a municipal code or
8 charter provision that specifies whether the approval by
9 the city council has to come before the appointment is
10 effective, after.

11 What is the process that is specified in the code?

12 MR. GREEN: The process simply is that under the
13 Spokane Municipal Code and the charter that the mayor
14 nominates and the city council must approve. There is,
15 unfortunately, no reference to time frame in there. I
16 believe there is an ordinance pending as a result of this
17 matter that would discuss that.

18 My concern as petitioner with respect to this issue,
19 Your Honor, is a -- some type of hypothetical fact patterns
20 with respect to if the mayor withholds the nomination and
21 the city council disapproves -- if the mayor withholds
22 forwarding the nomination and the city council disapproves,
23 does the mayor then say, well, I never submitted the
24 nomination, and therefore you have nothing to disapprove.
25 Those were the type of issues that caused the problem

1 charge created and placed in there.

2 THE COURT: You used the word "nominate." I didn't
3 see the word "nominate" in the ordinance. It says
4 appoints, that the mayor appoints. And then --

5 MR. GREEN: Yes, that's correct. Appoints, subject to
6 city council approval.

7 THE COURT: Right. But is there anyplace in the code
8 that says anything else? Because, again, I didn't see
9 anything that said -- that used the word "nominate."

10 MR. GREEN: Nominate was an incorrect word, Your
11 Honor. It was an appointment.

12 THE COURT: Okay. All right.

13 Well, first of all, the Supreme Court has generally
14 held that media articles do not form a basis for personal
15 knowledge required by law to support a recall charge. So
16 there is an issue about that. Although, again, the West
17 case says -- seems to indicate under some circumstances
18 media articles can be used.

19 Even considering the media articles that you have
20 attached to your petition, it is not clear what they show.
21 At least one of the articles quotes the mayor as saying
22 that Craig Meidl "will be moved into the position of full
23 chief." Is that an appointment? Is that a statement that
24 he's going to appoint him? You know, that is not clear
25 what that means.

1 Another article says that Meidl's salary has not been
2 finalized. If his salary hasn't been finalized, clearly he
3 is not finally in the position. So the article seems to
4 indicate that the appointment process, at least at that
5 time, because the first article is dated August 1, and then
6 August 16 you filed your petition. So we have basically 16
7 days there. The article seem to indicate the appointment
8 process has not been completed.

9 One article quotes council involvement is saying that
10 the municipal code gives the council authority to confirm
11 the appointment. If the council's understanding is that
12 the appointment is made and then they confirm it, then that
13 would seem to anticipate that the mayor would first make an
14 appointment and then it would be confirmed. It is a
15 two-step process.

16 So, again, the problem is -- I can certainly
17 understand why the City might want to modify their
18 ordinance on this issue because it is not clear what the
19 process is. If the process is supposed to be that the
20 mayor nominates someone and then that person does not take
21 office until approved by the city council, then they need
22 to make an ordinance that says that. But currently that is
23 not what the ordinance says.

24 And an elected official can't be condemned and
25 recalled from office for not following a procedure that has

1 not yet been adopted by the municipality.

2 As a matter of fact, one of the articles dated
3 August 4 says the city council will vote -- will vote on
4 Meidl's appointment. So within three days it appears from
5 that article that the City had started a process of
6 reviewing the appointment to decide whether or not to
7 confirm it or so -- so, again, the process is not specified
8 in the ordinance.

9 It appears, at least from the news articles that
10 Mr. Green is relying upon, that it may be an acceptable
11 procedure to have the mayor at least announce the person
12 that he wants to appoint or is appointing or, again, I'm
13 not sure exactly what the language should be, because the
14 only language in the ordinance says the mayor makes the
15 appointment and the appointment is subject to the approval
16 of the -- it seems so me if that is the only two options he
17 has to make an appointment, and then it is approved or not
18 approved, that would anticipate he has to make the
19 appointment first and then they would either approve it or
20 they don't approve it.

21 So given the fact the municipal code is not clear on
22 the procedure, there is no timeline specified in the
23 ordinance, for these reasons I find the charge to be both
24 factually and legally insufficient.

25 Issue number four: Beginning in April 2015 did Mayor

1 Condon fail to follow the City of Spokane's and Spokane
2 Police Department policies with respect to the sexual
3 harassment claim by Monique Cotton resulting in direct
4 financial loss to the taxpayers and the citizens of
5 Spokane.

6 Here again, Mr. Green, you are relying on the Seabold
7 Report and the media articles you attached; right?

8 MR. GREEN: Yes, Your Honor.

9 THE COURT: Again, am I correct that Ms. Cotton never
10 made what might be considered to be a formal complaint; she
11 never made a written complaint, is that correct?

12 MR. GREEN: She never made a written complaint, Your
13 Honor. But this is the area in the charge that has to do
14 with the impact of the violation of the oath of office.

15 I believe it was Footnote 92 of the report indicates
16 that neither Mayor Condon nor Theresa Sanders consulted or
17 even thought about the required -- the City policies that
18 are in place. The City policies that the City of Spokane
19 has codified policies with respect to sexual harassment and
20 the neglect of an elected official to perform his duty
21 faithfully imposed by law would mean that the mayor was at
22 least obligated to consider what city policies might apply
23 before acting.

24 In this particular case I believe that -- I don't
25 think there is misfeasance or malfeasance after having

1 drafted the petition back on August 16th -- but I do
2 believe there is a violation of the oath of office because
3 of the neglect issue that the investigator believed that
4 the mayor nor Theresa Sanders had consulted the policy
5 which the mayor -- that policy covers all city departments
6 except the police department, which has its own policy.

7 THE COURT: So what is it you are saying, that --

8 Are you saying that the mayor failed to consider the
9 policy or consult the policy, is that what you are saying?

10 MR. GREEN: If the mayor had consulted the policy and
11 then chose not to do it would be a discretionary act which
12 is not recallable. However, the investigator found and
13 wrote in I believe it was Footnote 92 that neither the
14 mayor nor Ms. Sanders even considered -- neither considered
15 nor consulted the policy. That policy is a mandatory
16 process for the City of Spokane. Therefore it was a
17 neglect of an elected official to perform a duty faithfully
18 imposed by law.

19 THE COURT: What happens if the elected official
20 doesn't consider the policy but the elected official's acts
21 actually conforms to the policy; would that still be a
22 violation of the oath of office?

23 MR. GREEN: I don't believe there would be a problem
24 in that particular case if their acts conformed to policy.

25 In this particular case it does not appear as

1 though -- I believe the investigator found that the end
2 result was correct, but the path on how the City got to
3 that end result did not follow city policy.

4 I am not questioning the -- whether or not the City
5 handled Ms. Cotton's particular facts and circumstances
6 correctly. The recall petition is focusing on the fact
7 that the mayor had an affirmative duty under the city code
8 to -- under the city policies -- to at least consider city
9 policies before going down the path.

10 Had he consider those policies and then not followed
11 them, then I believe there would have to be intent involved
12 in order for it to be a recallable situation. But in this
13 particular case the statutory authority appears to have
14 taken the concept of intent away through the 2003
15 legislation, and therefore by not even considering the
16 policies, he has violated his oath of office.

17 THE COURT: What did the mayor do or fail to do that
18 was contrary to the policies?

19 MR. GREEN: The policies, I think the investigator
20 found, were not well written to say the least, and
21 recommended that significant changes occur to bring them up
22 to a better situation where they would be more easily
23 understood and followed.

24 The policies appear to have required a written
25 complaint before a process started. Midway through there

1 there is a suggestion that if a supervisor becomes aware of
2 a sexual harassment issue, the supervisor -- the word
3 "shall" is used. I'm not sure that that -- in this
4 particular case that is applicable because the formal
5 written complaint was never filed. But I think the
6 citizens of Spokane should have an understanding that their
7 elected officials, if there are city policies in place
8 which are published and available for citizens to be able
9 to review, that the citizens of the city of Spokane should
10 be in a position where they will understand that their
11 elected officials will actually take a look at those
12 policies before acting.

13 THE COURT: Well, but you just said that according to
14 the investigator, the policies didn't kick into effect
15 until there was a written complaint; right?

16 MR. GREEN: In this particular case not only did --
17 not only is it not clear that the policy was effective, but
18 it is clear, at least from Footnote 92, that the mayor did
19 not even consider whether a policy applied.

20 THE COURT: Again, if it turns out the policy didn't
21 apply, can somebody be held to a -- violated their oath of
22 office by not considering a policy that didn't apply in the
23 first place?

24 MR. GREEN: The policy is entitled Sexual Harassment.
25 The claim informally was sexual harassment. Any employer

1 for a for-profit organization, any individual that has
2 responsibility especially for a for-profit organization,
3 knows that sexual harassment is exceedingly important in
4 today's workplace, and that any written policies should be
5 considered before a path is moved forward.

6 I am not arguing that the end result was bad. I'm
7 arguing that the process was not followed, nor was it even
8 considered, which is a violation based on the neglect
9 portion of the statutes.

10 THE COURT: Did the mayor say he had never read the
11 policy and didn't know anything about it? Or is he saying
12 that after he received the oral complaint from Ms. Cotton
13 he didn't go then look up the policy?

14 MR. GREEN: Footnote 92 refers to neither considered
15 nor consulted the policy. I don't know what the mayor did
16 or did not do. I'm relying on the findings of the
17 investigator in this particular case to faithfully report.
18 It was presumably based on in the news.

19 The mayor interviewed with the investigator, and
20 Ms. Sanders interviewed with the investigator. I am
21 presuming that it is reflected in those particular
22 transcripts.

23 THE COURT: How do you know that he didn't know that
24 the policy didn't apply since there was no written
25 complaint? He may have read the policy previously --

1 He's been the mayor for a while. I assume he has had
2 some other dealings with the policy.

3 MR. GREEN: I believe there have been plenty of other
4 situations where he may have been --

5 THE COURT: So each complaint that he's aware of, does
6 he have to go then re-read the policy or the procedure
7 manual and so on, or if he's already familiar with it, can
8 he go ahead and address the issue without, as you say,
9 consulting the policy?

10 MR. GREEN: The investigator also noted that he did
11 not consult with HR, and that the mayor and Ms. Sanders
12 went directly to their attorneys, which I'm presuming are
13 the City's attorneys. I do not know for sure.

14 THE COURT: But my question was, assuming the mayor --

15 You say there have been previous sexual harassment
16 issues. If he's already familiar with the policy, if he
17 knows that it doesn't apply where there is no written
18 complaint, then how can it be a violation of his oath of
19 office not to consult the policy -- or the actual written
20 document, when he may very well know it doesn't apply?

21 MR. GREEN: Under that hypothetical if he was aware of
22 the policy and he knew that the policy did not apply, then
23 there could not be a violation.

24 The Seabold Report does not indicate that he was aware
25 of the policy, so I respectfully disagree with your

1 hypothetical.

2 THE COURT: Did anybody ask him that question?

3 MR. GREEN: I do not know, Your Honor.

4 THE COURT: So if we had the transcripts of his
5 interview by Ms. Cappell, we might know the answer to that
6 question.

7 MR. GREEN: If they were publicly available, perhaps,
8 yes.

9 THE COURT: All right. Mr. King, your response on
10 this issue?

11 MR. KING: Your Honor, in the first instance,
12 Mr. Green has failed to specify what policy should have
13 been consulted or considered, but then goes on to say if he
14 considered or consulted a policy and then decided to do
15 something different, that would be an act of discretion and
16 not actionable under the recall statute.

17 What he's put before you, contrary to what the recall
18 statute requires, is a hypothetical on what he might have
19 done or might have thought about, which is insubstantial
20 and not the type of conduct that gives rise to the ability
21 to assert the right of recall under the statute.

22 We also have pointed out in our materials factually
23 that the mayor consulted with the city attorney's office
24 after receiving Ms. Cotton's complaint of misbehavior by
25 Chief Straub at the March 31st meeting, and that the city

1 attorney's office was aware of her express concern, and
2 that the city attorney's office conducted an investigation
3 involving attendance at the meeting that was the subject of
4 her articulated concern to Mayor Condon, and that because
5 Ms. Cotton was represented by counsel and attorneys for the
6 City could not interview a represented party, Ms. Sanders
7 was tasked with her part of the investigation, which was
8 interviewing Ms. Cotton.

9 So we know that her complaint which was about Chief
10 Straub's behavior at the March 31st meeting was
11 investigated in a bifurcated manner because it was a
12 representation of Ms. Cotton. The allegations against him
13 by Ms. Cotton were confirmed as being inappropriate conduct
14 at that meeting. Appropriate corrective action was taken
15 against Chief Straub by Ms. Sanders and Mayor Cotton (sic).
16 And at Ms. Cotton's request she was transferred to the park
17 department, a transfer that violates no policies
18 whatsoever, and was approved by the park department or the
19 park department executive who agreed she was selected to
20 fill an existing need in the park department.

21 So there is no factual and legal sufficiency as it
22 relates to this allegation. And to construct a recall
23 petition on the basis of not following a process when the
24 city policy recommends at the first level an informal
25 resolution of concerns and complaints before a formal

1 investigation is launched, the formal investigation of
2 course being launched when it is triggered by a formal
3 written complaint, does not comply with the mandate and
4 edict of the statute.

5 So we would urge the Court to find both a dearth of
6 factual and legal sufficiency for this charge.

7 THE COURT: As I understand Mr. Green's position, he's
8 not claiming that the complaint itself was somehow
9 mishandled. He's saying that the mayor should have first
10 consulted the policy. I would assume that means read the
11 policy; right? And that failing to do so would be a
12 violation of his oath of office.

13 I think that is the complaint.

14 MR. KING: What policy? He needs to be both concise
15 and specific as to what policy the mayor should have read.

16 And to the extent that the mayor is not a HR
17 specialist, HR was not involved in this matter because of
18 an internal conflict. Ms. Lowe was the head of HR, had a
19 husband in the police department, and consistently recused
20 herself from human resources issues involving the police
21 department for that reason.

22 To suggest the mayor violated an oath of office by not
23 considering a policy, which Mr. Green can't even point out
24 to us, when he acknowledges that the complaint was in its
25 final analysis well handled, that the mayor had the

1 discretion to ignore any hypothetical policy that he would
2 have considered, and it would be discretionary and not the
3 subject of a recall, and then to concede that the matter
4 was thereafter handled appropriately with a good outcome,
5 and to make that the subject of a recall, we think borders
6 on -- we think it would be an absurd outcome, Your Honor.

7 THE COURT: Okay. Mr. Green, anything else?

8 MR. GREEN: Your Honor, the policy is identifiable.
9 It was in the Seabold Report. Counsel is well aware of it.
10 It is City of Spokane Policy Admin 0620-05-35. And it is
11 applicable to all City divisions and departments. It does
12 not apply to the police department, which has its own
13 policy.

14 THE COURT: I think that to say that an elected
15 official violated the oath of office by not consulting the
16 policy, which by its terms didn't apply to the situation,
17 hypothetically I suppose that might be said to be a
18 violation of the oath of office. But it is so ephemeral,
19 it is -- a charge to support a recall has to be
20 substantial. I don't think anybody would consider it
21 substantial, the claim that the mayor violated the oath of
22 office by not going to re-read a policy which he may very
23 well have been familiar with already, the policy which did
24 not apply to the situation, and give that --

25 It's -- it's reasonable to assume that he was aware

1 that the policy, as Mr. King said, specifies in it that
2 it -- ideally claims would be resolved at the lowest
3 appropriate level informally and effectively. Which is
4 exactly what happened.

5 So the mayor took care of the problem informally and
6 effectively, which is following the policy. So I just --

7 And I'm not aware of any case, and certainly,
8 Mr. Green, you haven't cited any case to me where an
9 elected official effectively followed a policy and yet was
10 found to somehow have breached a duty by not reading the
11 policy before following it.

12 MR. GREEN: Your Honor, all the cases that I have
13 read, the courts have appeared to apply an intent statute
14 to the violation of the oath of office, therefore that
15 issue would not have come up. It is only as a result of
16 the law change in 2003 where "willful" was taken out where
17 I believe there is an argument that can be made that simply
18 neglect would be a violation of oath of office.

19 THE COURT: Well, again, there is no authority to
20 support that argument. In addition, I think that there
21 still has to be a substantial claim here. And I -- again,
22 I think that that type of claim to say that the mayor had a
23 duty to consult a policy that did not even apply to that
24 situation is -- would not be a substantial claim.

25 So I am finding that issue number four is both

1 factually and legally insufficient.

2 I have found that all of the charges are either
3 factually or legally insufficient, and I am dismissing the
4 case.

5 So, I will just fill out the order.

6

7 (Matter adjourned at 2:30 p.m.)

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1 STATE OF WASHINGTON)
2 : ss: REPORTER'S CERTIFICATE
3 COUNTY OF SPOKANE)

4 I, Kenneth J. Wittstock, a notary
5 public in and for the State of Washington, do hereby
6 certify:

7 That I am a Certified and Official
8 Court Reporter for Spokane County Superior Court,
9 Department No. 8, at Spokane, Washington;

10 That the foregoing hearing was taken
11 on the date and at the time and place as shown on Page 1
12 hereto;

13 That the foregoing is a true and
14 correct transcription of my shorthand notes of the
15 requested hearing transcribed by me or under my
16 direction, including any changes made by the trial judge
17 reviewing the transcript;

18 That I am in no way related to or
19 employed by any party or counsel in this matter;

20 That I have no financial interest in the
21 outcome of said litigation.

22 WITNESS my hand and seal this
23 24th day of September, 2016.

24 KENNETH J. WITTSTOCK,
25 CSR No. WI-TT-SK-J409NK
Notary Public in and for the
State of Washington, residing
at Spokane.
My commission expires 4-22-20.

Joe Wittstock, RPR - Official Court Reporter
Spokane County Superior Court, Spokane, Washington 39