

CITY OF SPOKANE ETHICS COMMISSION

ALEXANDER J. SHOGAN, JR.

Complainant,

vs.

**DAVID CONDON, MAYOR OF THE
CITY OF SPOKANE; THERESA
SAUNDERS, SPOKANE CITY
ADMINISTRATOR,**

Respondents.

DEFENDANTS'
MOTION TO DISMISS
COMPLAINANT'S "CLARIFIED II
COMPLAINT"

COMES NOW David Condon, Mayor of the City of Spokane, and moves the Ethics Commission to dismiss, for lack of jurisdiction and because the Complaint is frivolous and spurious, the latest iteration in Complainant's ongoing bad faith effort to smear Mayor Condon.

This Motion is based on the records and files herein and upon the attached Declaration of James King and is premised upon the following showing:

I. PROCEDURAL HISTORY

Complainant Shogan began his spurious campaign against Mayor Condon by filing, on December 2, 2015, an ethics complaint (Exhibit 1 to the Decl. King) alleging violation of Section 1.04.030 of the City of Spokane Code of Ethics claiming Mayor Condon lied when he

1 stated there had been no sexual harassment complaints lodged against former Chief Frank
2 Straub in September of 2015 and that he had only heard of issues regarding misconduct by
3 Chief Frank Straub within the last several weeks, again in September of 2015.

4 Shogan then filed an Amended Complaint on December 14, 2015, (Exhibit 2 to Decl.
5 King) making the same allegations as in the initial Complaint and alleging further that City of
6 Spokane employee Carly Cortwright had complained to Mayor Condon of misbehavior
7 involving Chief Straub in August of 2013. Complainant Shogan was then confronted with the
8 uncontroverted Declaration of Carly Cortwright (Exhibit 3 to the Decl. King) stating that she
9 had never made any kind of complaint, formal or informal, to anyone at the City of Spokane
10 until after Chief Straub resigned in September 2015. Cortwright also testified she had never
11 made a complaint in or around August 13 to anyone and that Mr. Shogan never made any sort
12 of investigation regarding when Cortwright had first complained regarding behavior of Chief
13 Straub.

14 On January 27, 2016, the Ethics Commission dismissed Complainant Shogan's
15 allegations contained in paragraph C of his sworn Amended Complaint alleging that Mayor
16 Condon was dishonest when he stated in September of 2015 that with regard to rumors of
17 misconduct by Chief Straub that he had heard of "these issues" in the "last several weeks" and
18 left for further determination Complainant Shogan's allegation in paragraph C that Mayor
19 Condon had been dishonest when he stated at a press conference on September 22, 2015, that
20 no sexual harassment claims had been lodged against Chief Straub. (Exhibit 4)

21 On February 16, 2016, Complainant Shogan withdrew the remaining allegation in his
22 complaint regarding alleged dishonesty at the September 22, 2015, press conference. (Exhibit
23 5).

1 On October 6, 2016, Complainant Shogan filed yet another Amended Complaint
2 attempting to resurrect, after a hiatus of eight months, his allegation in the previously
3 voluntarily dismissed Complaint that Mayor Condon had lied at the September 22, 2015, press
4 conference. Shogan added an allegation that came from a draft of the Seabold Group report
5 which alleged that Mayor Condon and others intentionally withheld information from the City
6 Clerk regarding public documents with the intent and purpose of delaying the production of
7 the records until after the Mayor's election. (Exhibit 6)
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10 Complainant Shogan in the same document also claimed he was entitled to
11 reconsideration on his previously voluntarily dismissed Complaint and on the allegation
12 dismissed before the voluntary dismissal having to do with "rumors of Straub's misconduct"
13 as addressed by Mayor Condon in the press conference. (Exhibit 6)
14

15 On December 22, 2016, Complainant Shogan then filed a CLARIFIED Sworn
16 Complaint against Mayor Condon resurrecting, by using precisely the same language, the
17 allegations in paragraph D of his original Sworn Complaint filed December 2, 2015, and
18 reiterating allegations having to do with Mayor Condon's response at the September 22, 2015,
19 press conference regarding the lack of any complaints for sexual harassment being filed by
20 Monique Cotton against former Chief Straub. (Exhibit 7) Shogan also added a contention that
21 Mayor Condon violated the Code of Ethics based on an article in the Spokesman Review. The
22 article (Exhibit 8 to the Decl. of King), of course, makes no statement attributable to Council
23 President Stuckart that Mayor Condon had lied to the Council President.
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27 On February 15, 2017, the Ethics Commission met in regular session and formally
28 dismissed Complainant Shogan's complaints and amended complaints or their remnants filed
29 by Complainant Shogan in 2015 and 2016 by referring to the actions taken at its December 21,
30

1 2016, meeting and formally dismissed any and all remaining allegations as to the Complaints
2 or Amended Complaints filed December 2, 2015, December 14, 2015, and October 6, 2016.
3 The Commission determined that it was not bound by the stipulated withdrawal of the
4 complaints by the parties on February 16, 2016. The Commission ruled that the extant
5 complaints, including the October 6, 2016, complaint, did not allege facts that constituted a
6 violation in sufficient detail so that both the Commission and the Respondent could reasonably
7 be expected to understand the nature of the alleged violations. (Exhibit 10)
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10 Complainant Shogan responded to the dismissal by filing on December 22, 2016, his
11 fourth Complaint (Exhibit 7) resurrecting allegations made in paragraph D of his original
12 Sworn Complaint filed December 2, 2015, and reiterating allegations having to do with Mayor
13 Condon's response at the September 22, 2015, press conference regarding the lack of any
14 complaints for sexual harassment being filed by Monique Cotton against former Chief Straub.
15 (Exhibit 7) Shogan also added a contention that Mayor Condon violated the Code of Ethics
16 based on an article in the Spokesman Review. The article (Exhibit 8), of course, makes no
17 statement attributable to Council President Stuckart that Mayor Condon had lied to the
18 Council President.
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21 On February 15, 2017, the Ethics Commission also undertook to evaluate for
22 jurisdictional purposes the CLARIFIED SWORN COMPLAINT filed on December 22, 2016.
23 At its February 15, 2017, meeting the Ethics Commission concluded that with respect to the
24 allegations in the December 22, 2016, CLARIFIED COMPLAINT regarding the September
25 22, 2015, press conference, that the same incident had already been considered in the
26 Pendleton matter and had been dismissed because the allegations, even if true, would be a *de*
27 *minimis* violation of the code. (See Exhibit 11, Decl. of King).
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1 Mr. Shogan's "Clarified II Complaint" is now the fifth effort by Mr. Shogan to smear
2 and defame Mayor Condon. Shogan's past efforts have been unsuccessful and his contempt
3 for the rules and processes of the Ethics Commission has been amply demonstrated.

4
5 In this latest iteration, Mr. Shogan claims that Mayor Condon made "Dishonest
6 Communications" to Spokane City Council President Ben Stuckart and to Spokane City
7 Council Member Karen Stratton. Neither Council President Stuckart nor Council Member
8 Stratton have filed a complaint.

9
10 Mayor Condon will address each of the allegations separately.

11 **II. ALLEGED DISHONEST COMMUNICATIONS**
12 **BY MAYOR CONDON TO BEN STUCKART**

13 In support of his content that Mayor Condon made "Dishonest Communications" to
14 Council President Ben Stuckart, Mr. Shogan attaches to his Complaint excerpts from an
15 interview of Mr. Stuckart taken on Tuesday, March 22, 2016, as part of the Seabold
16 investigation. The attached Exhibit 14 to the Declaration of James B. King, contains excerpts
17 from that interview, and specifically, pages 12, 13 and 14, establish one fact that is beyond
18 dispute. None of the conversations described by Mr. Stuckart in that excerpt were
19 conversations between Mr. Stuckart and Mayor Condon except a conversation that took place
20 in an executive session of the City Council which took place on September 22, 2015.

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22 That conversation was addressed specifically and directly in the Seabold report in
23 paragraph 11, page 89, as follows:

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26 The controversy surrounding the September 21 executive session can be
27 reduced to one question that Councilmember Stratton posed to Mayor Condon
28 after he told the Council he had asked for Straub's resignation.

29 Councilmember Stratton asked in words or substance whether Mayor Condon's
30 decision to ask for Straub's resignation related to Monique Cotton or rumors

1 relating to Monique Cotton. He [Condon] responded, "No." As discussed above,
2 that was a truthful answer. Ms. Cotton was not a factor in the Mayor's decision.
3 At most, she was one of many who had been exposed to Chief Straub's abusive
4 management style.

5 The Seabold investigation also addressed on page 88 of the same report in Section 10
6 that Monique Cotton was a non-factor in the process that led to the termination of Chief
7 Straub.

8 Accordingly, Mr. Shogan's claim that Mayor Condon dishonestly communicated with
9 Council President Stuckart on September 21, 2015, is meritless, frivolous and is belied by the
10 very document that Shogan cites as supporting the allegations.
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12 In addition to the foregoing, on the 22nd day of December, 2016, Mr. Shogan filed the
13 exact same allegation against Mayor Condon claiming that the Mayor had been dishonest in
14 the September 21, 2015, executive session of the Council. That allegation was dismissed by
15 the Ethics Commission.
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17 **III. ALLEGED DISHONEST COMMUNICATIONS BY MAYOR CONDON TO**
18 **COUNCIL PERSON STRATTON**

19 Councilperson Stratton was apparently persuaded to sign an affidavit under penalty of
20 perjury which is attached as Exhibit C to the Shogan Complaint dated March 1, 2017.

21 In her affidavit, Councilperson Stratton, obviously at the urging of Mr. Shogan and for
22 political purposes, took great liberties with the question that was actually put to Mayor
23 Condon in the September 21, 2015, executive session of the City Council. As Councilperson
24 Stratton's interview transcript shows, she asked if the action by Mayor Condon requiring
25 Chief Straub to resign had anything to do with Monique Cotton. Transcript p. 28, ll. 3-7. She
26 was told, "No" by Mayor Condon. This statement by Mayor Condon was addressed by the
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1 Seabold report again at pages 88 and 89 in which Seabold concluded that Ms. Cotton and her
2 issues were not a factor in Mayor Condon's decision to ask for Chief Straub's resignation and
3 that Mayor Condon truthfully responded to the Council's questions about Ms. Cotton during
4 the September 21, 2015, executive session. (See Stratton statement, Exhibit 15 to the
5 Declaration of James B. King.)
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7 **IV. ALLEGATION THAT MAYOR CONDON INTERFERED WITH**
8 **PUBLIC RECORDS DISCLOSURES**
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10 Complainant Shogan also contemptuously and dishonestly alleges a violation of
11 the Code of Ethics by Mayor Condon in allegedly interfering with timely disclosures of
12 public records based on a public information request by the Spokesman Review.
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14 In his CLARIFIED II Complaint, Mr. Shogan adopts language from a draft of
15 the Seabold Group report regarding its investigation of circumstances surrounding the
16 Straub resignation and associated topics including the City's Response to Public
17 Records Requests. Shogan cites language in a draft of the report which alleged,
18 without support, that Mayor Condon with others had withheld information from the
19 City Clerk regarding certain documents with the intent and purpose of delaying
20 production of the records until after the mayoral election.
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23 What Mr. Shogan fails to explain, in an egregious display of lack of candor, is
24 that the exhibits to his Complaint, consisting of an investigative summary by the
25 Seabold group were withdrawn by the Seabold group. Seabold, in its final and official
26 report, concluded on page 20 as follows:
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28 We also conclude that Ms. Isserlis and Ms. Sanders deliberately
29 withheld information from the City Clerk regarding the existence
30 of the November 24 documents with the intent and purpose of

1 delaying the production of those records until after the Mayor's
2 re-election.

3 The contrast between the withdrawn version and the version published and filed
4 for public consumption is stark. The last paragraph on page 3, section 1, does not
5 conclude that Mayor Condon acted in an inappropriate fashion with respect to
6 document requests.

8 **V. CONCLUSION**

9 Clarified II Complaint of the contumacious and vexatious Mr. Shogan should be
10 dismissed.

12 DATED at Spokane, Washington this 3 day of April, 2017.

13 EVANS, CRAVEN & LACKIE, P.S.

14 By

15 James B. King, WSBA #8723
16 Attorney for Respondent David Condon

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 3 day of April, 2017, 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 ☐
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Keller W. Allen
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HAND DELIVERED ☒

4-3-17 / Spokane, WA
(Date/Place)

