

CITY OF SPOKANE ETHICS COMMISSION

**ALEXANDER J. SHOGAN, JR.,**

Complainant,

vs.

**DAVID CONDON, MAYOR,**

Respondent

**FINAL PREHEARING ORDER**

The Spokane Ethics Commission met on March 21, 2018, and after input from the parties and their representatives, now, therefore, enters the following prehearing order:

**I. Date, time and location of full hearing:**

The full hearing on this matter will be held on: April 18, 2018, at 1:00 p.m. at Spokane City Hall, Council Chambers. Parties have stipulated to hearing in April 2018.

**II. Subpoenas for witnesses to attend hearing:**

Proposed subpoenas must be provided to the Spokane Ethics Commission **two weeks** in advance of the hearing, by April 4, 2018). The Commission will meet in special session on April 11, 2018, to decide whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission does not guarantee the attendance of witnesses; its subpoenas are not self-executing.

1                   **III. Preliminary Order**

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

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

4                   (iii) All witnesses shall testify under oath.

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

6                   (v) The Commission has dismissed all claims against Theresa Saunders at the request of  
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8 Complainant Shogan.

9                   (vi) Any motion any party wishes to be heard must be made in writing to the Commission after  
10 the date of this Order, with copies served on all parties. No action will be taken on any motion unless  
11 the opposing party has been given an adequate opportunity to respond. The Commission will take no  
12 action on any motion, written or oral, made prior to the date hereof.  
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14                   **IV. Conduct of hearing:**

15                   **1. Commission participation:** Members of the Commission will be allowed to ask questions.  
16 Parties are permitted to follow up on questions asked by Commissioners and answers received.  
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18                   **2. Exhibits:**

19                   **A. Service and filing of exhibits:** Exhibits shall be served and filed **two weeks** in advance of  
20 the full hearing (by April 4, 2018). Electronic delivery is preferred, but hard/paper copies will be  
21 accepted.  
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23                   **B. Objections to exhibits:** Objections to exhibits must be filed one week prior to the full  
24 hearing (April 11, 2018). Responses are due 48 hours before the full hearing (by April 18, 2018, at 1:00  
25 p.m.).

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

3 **D. Numbering exhibits: exhibit lists:** Complainant will use exhibit numbers 1-20,  
4 Respondent will use exhibit numbers 21-40. Each submitting party will pre-number and pre-mark  
5 exhibits, and shall submit a list of all exhibits simultaneously with the exhibits served.  
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7 **E. Impeachment exhibits:** Any party may impeach any witness by exhibits offered to reflect  
8 on the credibility of the witness.

9 **F. The full hearing will commence with argument over objections to exhibits and/or**  
10 **witnesses.** Parties are encouraged to make anticipated evidentiary objections in advance of the full  
11 hearing.  
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13 **3. Witnesses lists:**

14 **A.** Witness lists shall be served on each party and filed with staff **two weeks** before the full  
15 hearing.

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

17 **4. Conduct of hearing:**

18 **A. Presentation of testimony and argument** at the full hearing shall occur as follows:  
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- 20 1. Introduction of hearing by Commission Attorney.
- 21 2. Opening Statements (non-argumentative summary of evidence to be presented) by  
22 counsel and/or parties. Only one opening statement is permitted for each party.
- 23 3. Presentation of Complainant's Case in chief (Presentation of Witness and  
24 Documentary Evidence). Complainant calls witnesses, presents exhibits. Respondent cross  
25 examines witnesses immediately following such witness' testimony on direct examination and  
26 may present exhibits. Cross examination is generally limited to the scope of the direct  
27 examination. The Chair has discretion to permit some latitude. Complainant may conduct  
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1 redirect examination, which will usually be strictly limited to the scope of the cross  
2 examination.

3 4. Questions by Commission (for each witness).

4 5. Follow-up Questions by Complainant and Respondent, if any, after which the witness  
5 may be excused.

6 6. Complainant rests.

7 7. Presentation of Respondent's Case (Presentation of Witness and Documentary  
8 Evidence). Respondent calls witnesses, Complainant may cross examine immediately  
9 following such witness' testimony on direct examination, and Respondent may conduct  
10 redirect examination, within the scope of the cross examination. Respondent may choose to  
11 defer opening until the beginning of Respondent's case in chief.

12 8. Questions by Commission. Follow-up Questions by Complainant and Respondent, if  
13 any, after which the witness may be excused.

14 9. Respondent rests.

15 10. Closing Arguments.

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18 **B. Rules of evidence:** It is the intention of the Ethics Commission to hear all relevant  
19 evidence. Lack of conformity to state or federal rules of evidence goes to the weight, not the  
20 admissibility, of evidence. Questions with the purpose or effect of harassing or intimidating a witness  
21 will not be tolerated. Cumulative or argumentative testimony, speculations of a witness, and testimony  
22 based solely upon hearsay are not helpful to the truth-finding process and may therefore be excluded,  
23 in the discretion of the Chair. Counsel may point out to the Commission that the opposing party's  
24 evidence, in whole or in part, consists of evidence that could be deemed inadmissible under evidentiary  
25 rules applicable in a judicial forum.  
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1 C. Motions to dismiss shall not be made or considered during the full hearing, except at the  
2 conclusion of the opposing party's case.

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

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

10 Whether Respondent Mayor David Condon violated SMC 01.04A.030N as alleged in  
11 Complainant's March 3, 2017 Clarified II Complaint, in discussions with Council President Stuckart  
12 and Councilmember Stratton regarding the reasons for taking disciplinary actions against Police Chief  
13 Straub in 2015.

14 ENTERED this 21<sup>st</sup> day of March, 2018.

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18 Acting Chair, Spokane Ethics Commission  
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