

CITY OF SPOKANE ETHICS COMMISSION

Ethics Commission's Findings, Conclusions and Decision
Regarding Complaint filed by Alexander J. Shogan against David Condon

INTRODUCTION AND RECITALS

The Spokane Ethics Commission held a contested hearing on April 18, 2018 pursuant to SMC 1.04A.110F. At such hearing, Complainant was assisted by counsel, but conducted the hearing pro se. Respondent was represented by counsel. At the request of Complainant, witnesses were subpoenaed.

At the April 18 hearing, witnesses were present and called to testify under oath. Witnesses questioned by both sides and some were also questioned by Commissioners. Both parties had opportunity to cross examine witnesses. Witnesses included Karen Stratton, Ben Stuckart, Erin Jacobsen, Assistant Chief of Police Justin Lundgren, former Assistant Chief of Police Rick Dobrow, and Mayor David Condon.

Herein are set forth the written findings of fact and conclusions of law and decision, as provided in SMC 1.04A.110H. Chairperson Dennis Cronin recused himself from the proceedings on the ground of his relationship with a witness, and to avoid the appearance of bias or impropriety. Chair Cronin did not participate in the proceedings, and Acting Chair Brian Steverson presided over the proceedings.

FINDINGS

The Ethics Commission makes the following findings:

1. On March 17, 2017, Alexander Shogan filed an ethics complaint against David Condon entitled "Clarified II Complaint."
2. The Clarified II Complaint alleges that Mr. Condon violated SMC 1.04A.030 (N) of the Code of Ethics regarding prohibition against commissions of acts of moral turpitude or dishonesty. The complaint asserts that Mr. Condon was dishonest in responding to questions from City Council members during a September 21, 2015 executive session of the City Council.
3. The Prehearing Order entered March 21, 2018 without objection states that the sole issue to be decided at the April 18, 2018 hearing was: "Whether Respondent Mayor David Condon violated SMC 1.04A.030N as alleged in Complainant's March 3, 2017 Clarified II Complaint, in discussions with Council President Stuckart and Councilmember

Stratton regarding the reasons for taking disciplinary actions against Police Chief Straub in 2015.”

4. At the April 18, 2018 hearing, the Commission considered the exhibits properly presented by both parties, and considered the testimony of witnesses.

5. At the hearing, witnesses called by Complainant testified that they had some concerns regarding the executive session discussions, but they denied knowledge that Mayor Condon was untruthful when he told them that the reason for a disciplinary action he took at that time against then-police Chief Straub was based upon letters from subordinates from the Command Staff and officers, and not based upon any misconduct issues involving former Police Department employee Monique Cotton. Both of Complainant’s witnesses agreed that the letters from the Police Department Command Staff and officers raised public safety concerns.

7. Witnesses called by Respondent testified that there were serious performance issues presented to Mayor Condon in letters received on or about September 18, 2015. The letters were from two separate groups of senior officers of the Spokane Police Department. Sending these letters to Mayor Condon was an unprecedented action clearly indicating turmoil at the Spokane Police Department, requiring prompt action by the Mayor. These letters made clear to Mayor Condon that an immediate change in police leadership was necessary. The letters implied but did not threaten precipitous action by these groups if an immediate change was not made.

8. At the April 18, 2018 hearing, Mayor Condon partially waived the attorney-client privilege for the weekend of September 19-20, 2015 only, in order to allow Erin Jacobsen, then-assistant city attorney for human resources issues, to testify that no issues related to police department personnel other than the issues raised by the two letters were discussed when the Mayor’s discretionary personnel actions in response to the two letters were under consideration.

9. Erin Jacobsen, Chiefs Dobrow and Lundgren, and Mayor Condon were all credible witnesses whose testimony was consistent, clear, and not evasive on any point.

10. The Spokane Ethics Commission therefore finds as a factual matter that Complainant did not persuade its members that, on a more probable than not basis, Mayor Condon’s statements during the September 21, 2015 executive session violated the Code of Ethics as alleged.

CONCLUSIONS


Based upon the foregoing findings of fact, the Ethics Commission enters the following conclusions:

1. The Commission has jurisdiction over the subject matter of the Clarified II Complaint.
2. Complainant had the burden of proving, on a more probable than not (preponderance) basis, that Mayor Condon violated SMC 1.04A.110(N). A full hearing as contemplated by SMC 1.04A.110 was properly conducted on April 18, 2018 to determine whether the violation was committed as alleged.
3. Complainant did not carry the burden of proving a violation of SMC 1.04A.110 on a more probable than not basis.
4. Complainant's Clarified II Complaint is therefore overruled, and the Commission unanimously finds in favor of Respondent.

DECISION

Based upon the Findings and Conclusions set forth above and the deliberation of the Ethics Commission, the Ethics Commission determines that Complainant did not carry his burden of proving a violation of SMC 1.04A.110(N), and that therefore Respondent must prevail.

This decision was approved by a vote of six to zero of the Ethics Commission members present for and participating in the hearing, and was announced orally from the dais by voice vote on April 25, 2018.



Brian Steverson – Acting Chairperson



Date