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5 CITY OF SPOKANE ETHICS COMMISSION

6 Neil Muller,

7 Complainant,

CONSOLIDATED  
PREHEARING ORDER

8 vs.

9 Zack Zappone,  
10 Mark Carlos,  
11 Jeff Gunn, and  
12 Betsy Wilkerson,

EC-23-02  
EC-23-03  
EC-23-04  
EC-23-05

13 Respondents.

14 The Spokane Ethics Commission met on July 26, 2023, and after finding the  
15 Ethics Commission has jurisdiction to consider the above-entitled matters, issues the  
16 following prehearing order regarding the hearing on the complaints filed with the  
17 Ethics Commission by Neil Muller.  
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20 **I. DATE, TIME AND LOCATION OF HEARING.**

21 The hearing on these matters will be held on September 27, 2023, at 3:00 p.m.  
22 at Spokane City Hall at a meeting location to be identified in the meeting notice.  
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25 **II. BRIEFING SCHEDULE.**

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27 1. The complainant shall submit an opening brief for each complaint by  
28 September 6, 2023, addressing the allegations set forth in each complaint and  
29 identifying the alleged violation(s) of the Code of Ethics.  
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2. Each respondent shall submit an individual reply brief pertaining to their respective complaint by September 13, 2023.

3. The complainant shall submit a rebuttal brief to each reply brief by September 20, 2023.

4. The respondents' reply brief may include any motions to dismiss. The complainant's rebuttal briefs may include a response to any motions to dismiss.

5. The party filing a brief shall file the original brief with the Ethics Commission and serve a copy on the opposing party. Service may be completed electronically by sending the pleadings, along with all attachments, exhibits, affidavits or other documentation via e-mail by the deadlines set forth above.

6. Service upon the Ethics Commission shall be accomplished by electronically serving the pleadings and documents with the legal counsel for the Ethics Commission from the City Attorney's Office at [mpiccolo@spokanecity.org](mailto:mpiccolo@spokanecity.org).

7. Objections to any material filed by the parties shall be submitted to the Ethics Commission by September 22, 2023.

8. Affidavits and exhibits not objected to will be deemed admissible.

### III. TESTIMONY.

1. Pursuant to SMC 1.04A.110 F. 1, the Commission shall consider additional evidence submitted by the parties including the submission of affidavits, exhibits and documentary evidence. By September 20, 2023, each party shall notify the Commission and the opposing party if the person signing the affidavit (the "Affiant") shall be required to attend the September 27, 2023, hearing in order to

1 provide the opposing party the opportunity to cross-examine the individual. The party  
2 submitting the affidavit shall assure the attendance of the Affiant.

3 2. If a party intends to call a witness other than an affiant, that party shall  
4 submit the name or names of all witnesses to the Ethics Commission and serve the  
5 opposing party with the name(s) of the witness by September 6, 2023. Any objections  
6 must be served and filed before September 22, 2023.

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8 3. If a party desires to subpoena a witness, that party shall submit the  
9 proposed subpoena to the Commission two weeks in advance of the hearing. The  
10 Commission will meet in special session two weeks before the hearing to decide  
11 whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH  
12 PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL  
13 BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission  
14 does not guarantee the attendance of witnesses; its subpoenas are not self-  
15 executing.  
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#### 19 20 **IV. HEARING PROCEDURE.**

21 1. Only the complainant and the respondent or their legal representatives  
22 may participate at the hearing.

23 2. Witnesses, if any, shall testify under oath.

24 3. The Commission will hear arguments concerning any objections to  
25 exhibits or witnesses prior to any motions or arguments on the merits.

26 4. The Commission will next hear and rule upon any motions to dismiss or  
27 other similar dispositive motions prior to arguments on the merits. The party submitting  
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1 the motion shall proceed first with presenting their argument in support of the motion.

2 The opposing party shall respond to the motion followed by rebuttal by the moving  
3 party.

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5 5. The Commission shall proceed to a hearing on the merits of each  
6 complaint for any remaining allegations or issues, as follows:

7 (a) Opening Statement (non-argumentative summary of evidence to be  
8 presented) by Complainant.

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10 (b) Presentation of Complainant's Case.

11 (c) Cross Examination of witnesses or affiants by Respondent.

12 (d) Questions by Commission.

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14 (e) Follow-up Questions by Complainant and Respondent.

15 (f) Complainant rests.

16 (g) Opening Statement (non-argumentative summary of evidence to be  
17 presented) by Respondent.

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19 (h) Presentation of Respondent's Case.

20 (i) Cross Examination of witnesses or affiants by Complainant.

21 (j) Questions by Commission.

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23 (k) Follow-up Questions by Complainant and Respondent.

24 (l) Respondent rests.

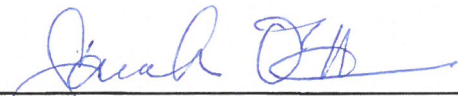
25 (m) Final Arguments.

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1           6.       The Commission shall decide issues before it based upon the  
2 preponderance of the evidence standard, which provides that a violation must be  
3 more likely than not to have occurred, before the Commission will hold for the  
4 complainant. SMC 1.04A.110 F. 2.  
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8 Sarah O'Hare, Co-Chairperson

8-25-2023  
Date

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10  
11 Clayton McFarland, Co-Chairperson

08/23/2023  
Date

