

**CITY OF SPOKANE ETHICS COMMISSION
MEETING MINUTES
FEBRUARY 15, 2017@ 4:00 P.M.**

Dennis Cronin, Chair, commences the meeting at 4:04 p.m., and asks members to introduce themselves. Present are: Brian Steverson, Sarah O'Hare, & Amina Fields. Dennis introduces Milt Rowland who states he has joined them today as special counsel to the Ethics Commission:

The meeting's agenda is reviewed. Brian moves to approve the minutes, as is, and Amina seconds. Agenda approved unanimously.

Dennis states the next thing to approve are the Minutes from the meeting of December 21, 2016. Everyone has a copy, it is reviewed, and then, on motion by Sarah with a second by Brian, the Minutes are approved as is unanimously.

Dennis states the next action item listed would be the interview of applicants, should there be any present, but there are none today, so the Commissions unanimously approves to skip that item today. Brian so moves, Sara seconds, all approve.

The next item is the approval of the Findings, Conclusions, and Decision regarding the Complaint filed by Joe Shogan, against David Condon, Case No. 2016-11. Everyone has a copy of the Findings and Dennis provides five minutes for review. Brian moves to adopt the findings. Sarah Seconds. All in favor, the Findings are adopted.

The next matter is the Complaint filed by Shogan against Mayor David Condon – Ethics Commission matter No. 2016-12. The Commission takes five minutes to review the Complaint materials. Mr. Shogan is not present yet – it is 4:12 p.m. Mr. King is present. Milt states, for the record, Mr. Shogan had called him prior to the meeting at about twenty to four to advise he was running late. Milt states he did not get the impression he would be more than 15 minutes late, but he had not excused his tardiness and had simply said he would so advise the Commission. The chair asks the Commission as to their thoughts of Mr. Shogan's tardiness or, perhaps it might turn out to be an absence. Brian states the Commission should wait ten minutes. Sarah agrees they should wait ten minutes and Amina also agrees. Dennis notes the weather is bad and snowy and he recesses the meeting until 4:25. There is quiet discussion among members while reviewing the materials and reading news article.

BACK IN SESSION AT 4:25 p.m.

Mr. Shogan is still not present. Mr. Cronin calls out again for Mr. Shogan and he is still not present. Mr. Cronin asks if there is a motion to dismiss this matter for lack of prosecution. Or another motion? If it should be continued? Or..? Amina states she would make a motion to dismiss for lack of jurisdiction based on the lack of stated facts presented for their consideration without any sufficient detail- enough to be able to understand the nature of the complaint. She adds Shogan failed to state which acts were a violation, or any detail, or any dates, and he (Shogan) refers to a news article, wherein he indicates there are a couple of statements that can be attributed to the Mayor, but she feels we need to clarify what the statement he is actually asserting was said and how it was dishonest, specifically, so that they may evaluate each conduct on its own. Dennis asks if there is a second to the motion and there is no second. Dennis asks if there would be any discussion about the Motion. There is no response.

Milt asks if he may be heard. He states it is not really an academic, or merely an academic exercise, to say that it's not clear at all what is really being alleged here. That what is being alleged is that a newspaper article says the Mayor lied, but nobody says in the complaint that they saw or understood or were affected by some act of dishonesty. So it would be a little bit like charging someone with a crime based on, say on a newspaper article, nobody admits to actually having seen or heard anything or observed the defendant doing anything, so there really is no allegation here. The Complaint is saying that someone said the Mayor lied. But that is not the same thing as saying the Mayor lied. At any rate, he states he doesn't presume to tell anyone what to do, but while he was reading the complaint, that just kept hitting him.

Brian states this complaint is a little different than the one received in the past, because Mr. Shogan is asserting the Mayor lied to Council Pres. Stuckart. He twice indicates that that is the act of dishonesty to which he is referring, which is different than previous complaints that they have reviewed wherein he had referred to another act. And he agrees with Milt the only evidence to support this is the article in the Spokesman in which Stuckart is quoted as saying he had been lied to. So Milt is correct when saying there is no evidence of the act or when it occurred.

Mr. Shogan now presents, apologizing he is late and immediately approaches the podium. He begins to state that: "the first allegation, you already granted jurisdiction to, you never heard it..... " Mr. Cronin then interrupts and says, Mr. Shogan, we have a motion on the floor... and Mr. Shogan says I am fine, just tell me where you all are at. Milt states, "well, actually, Mr. Shogan, when it is appropriate for you or any other member to approach we will let you know". Mr. Shogan apologizes stating he misunderstood where they were at and takes a seat. Dennis asked Brian what he was saying before and Brian states he is done. Sarah states she agrees with Brian that those statements are different from the ones Shogan alleged before. She feels she wants to second Amina's motion, but now that Mr. Shogan has come she doesn't know if they would want to reassess now that Mr. Shogan has arrived. Amina says she would agree and shelve her motion while asking for some time to question Mr. Shogan. And Brian states he would agree. Sarah seconds that Motion. All approve.

Dennis states now therefore they are now again addressing the clarified complaint. Mr. Shogan is invited forward and he states, "the first allegation you granted jurisdiction to already was approved, so, by res judicata, you have already said that you have jurisdiction to hear this. It's never been heard. My Complaint was dismissed in the past because, it was basically stale, per Mr. Rowland's instructions, because it had not been heard within 90 days. But, this complaint is not stale. It is called clarified because I was asked to clarify what exactly I was doing. So the first allegation should go on to a hearing. You can't withdraw jurisdiction once you have granted it. The second one has never been brought before you. It's a statement by Council President Stuckart that the mayor lied to him. So you have two people with divergent stories and you would need to subpoena them both and have them come down here and question them. There is nothing more clear than an allegation where one city official says another city official lied to him and I don't know how you are going to get around that without a jurisdictional hearing.

Milt asks Mr. Shogan, "what are you talking about? They already granted you jurisdiction? Are you talking over a year ago? Mr. Shogan says, "Yeah, you granted jurisdiction to hear that allegation, but they never heard it, Milt." "You just dismissed it as tardy". "You never heard the complaint at a hearing - you just dismissed the complaint because it was tardy". Milt states, "well, the matter was removed from the docket on the parties motion, so what you are saying is kind of similar, there really isn't res judicata. "You are actually saying if the same allegation was found sufficient a year ago, you see no reason why it wouldn't be sufficient now? Joe states, "well, yes, okay, but what I really meant was that first allegation already survived jurisdiction and it's never been heard by you. The Complaint that it was contained in was dismissed as being tardy, late, whatever. Milt, asks what is the first allegation, Joes says well, it's the first allegation, that is Mr. Straub's problem in April or a few weeks ago. And he has a copy of the original finding signed by Mr. Bruner where this Commission found there was grounds for jurisdiction to hear that allegation.

Milt states he is sorry, but he is looking at the sworn complaint, the one filed December 22, 2016, what is the first allegation in *that*? Shogan, states the first allegation is that the Mayor was dishonest in saying when he first learned about the allegations against Chief Straub. And the Chair, Mr. Bruner, found the second allegation, which is the same word for word in this allegation, the commission had jurisdiction over that the conduct, if found to be true, the conduct is sufficient to be a violation of the Ethics Code.

Mr. Shogan states the first complaint he filed way back, before Noah was born. Mr. Stevenson says that they are only interested in the complaint filed before them right now the one filed December 22nd. Joe states, exactly and "you already found jurisdiction". Looking at Clarified Complaint of December 22nd, Paragraph D – is word for word the same allegation the Commission already determined jurisdiction. Item E is brand new. He has a copy signed by Mr. Bruner that there is jurisdiction for Item D.

The Commission reviews the Complaint. Mr. Cronin states that Shogan has two complaints, the first allegation was dismissed. The second allegation asserts that Mayor Condon failed to tell the truth regarding claims of sexual harassment made by City employees formerly working at the SPD. And that one the argument was found to have jurisdiction. In Shogan's clarified complaint the allegation is that the Mayor failed to tell the truth regarding several claims made by Monique Cotton against then-Chief Frank Straub. That is where it ends. And, from his argument Cronin gathers Shogan is trying to say that although they are worded differently they mean the same thing. Mr. Shogan confirms that is right.

Mr. Cronin said perhaps they should hear from Mr. King. Mr. King comes forward and states that the interpretation of Bruner's order by Cronin is correct. January 16th one of the allegations was dismissed for lack of jurisdiction. The second one, the commission found that jurisdiction existed and survived at that time. That accusation was regarding a press conference wherein the Mayor responded to a question dishonestly to questions about claims of sexual harassment, that no formal claims had been filed. Following the Commission deciding that it had jurisdiction on that claim, filed by Mr. Shogan, the parties dismissed the litigation. And, this Commission, not twenty-five minutes ago, just entered Findings and Conclusions saying that it had no obligation and it was not bound by the Stipulation of the Parties and was not going to exert jurisdiction over anything that Mr. Shogan had filed up to his Clarified Amended Complaint. That was the action the Commission just took, with notice to Mr. Shogan who was in possession of the Findings and who didn't deem to be here when the commission took that up twenty five minutes ago as part of its agenda. So this Commission has already determined it's not going anywhere. Then they gave him the opportunity to file a new complaint because what he had up to that point simply didn't pass muster and what he has done is only recycle his prior old complaint that has been dealt with under the Spitzer and Pendleton Complaints. And King says he is not even counting the NOW Complaint which was dismissed, where the same allegation was made, this is now at least the fifth separate time that the remarks of Mayor Condon at the press conference have come before this Commission in the form of a complaint, twice dismissed. King states now they are back again for Mr. Shogan's third bite of the apple on the exact same claim. The judge ruled in the Condon recall litigation as well. We believe they Commission has already ruled on this issue repeatedly. A judge dismissed the matter in the Superior Court recall case under these facts. And we believe, under res judicata, this claim must also be dismissed. Because this Commission and its predecessors have already dealt with it - ad nauseam. There is nothing new in the Clarified Complaint. It is a repurposing of the same allegation.

Dennis asks, "first off, for the record, you represent, who?" Mr. King states, "I represents Mayor Condon the respondent." So you were sitting here when I inquired of Mr. Shogan, you heard what I asked, correct? I am just trying to shorten this a bit. Mr. Shogan filed an amended complaint which is then subsequently by some agreement that we were not party to, withdrawn, subject to being brought back. And the second allegation in the amended complaint was that Mayor Condon failed to tell the truth regarding sexual harassment claims made by city employees working at the police dept. And his clarified amendment identifies that party as Monique Cotton.

We earlier dismissed such a complaint. Are you asserting that it has already been dismissed? This evening we adopted some findings and dismissed the amendment complaint. So it is not live anymore. Would you agree with that? And, so, Mr. Shogan was not here when that happened for whatever reasons, but that was just confirming what we had already determined.

Mr. King states there is nothing new to this complaint, and it is just recycled version of these same complaints. Brian states that the Findings they approved earlier did not carry over jurisdiction over to the amended complaint. So we are now being asked to re-find jurisdiction is that correct? Mr. King states that is exactly correct. The allegations are the very same and of the same fact pattern. Brian states this is different, however, in that it contains new allegations regarding Mr. Stuckart's statements. So, in that way, it is not entirely recycled. Mr. King has provided the complete article from the Spokesman. That article makes it clear the statement at issue here is the same one that has been addressed in Spitzer, and other complaints already.

Brian states he disagrees on two points, but it still might support Mr. King's case. He reads the article as to what Stuckart had said. He simply says he has been lied to, but not, specifically, by the mayor. Brian reads where Sanders was asked by Stuckart about complaints, and thinks the only reference was to Theresa Sanders. Amina asks Mr. King about the Pendleton case was dismissed on the basis if the violation were true, it was a minor violation. The Commission had found that there was a possible circumstance where what the Mayor had said could be viewed as correct, and so that was what the Superior Court agreed with as well.

Shogan states they Commission has never subpoenaed the mayor or anyone else, to thoroughly review the matter or question him as to the fact. The Commission never heard the matter. If they have questions as to whether the Council President was lied to then that is an issue of fact you cannot dismiss that at a jurisdictional hearing. You have to hear the matter.

Dennis reviews the circumstances where the Commission may dismiss a complaint. Joe said that was fine and good, but in order to dismiss it you have to hear it. The commission has never heard it. The second allegation has never been reviewed and, unless you bring Mr. Stuckart in to review that, you don't have an answer. He would say you have to have a hearing to do that. Shogan states the second allegation is brand new. There you have a public official, the council president, saying the Mayor lied. Now if you want to tell him they don't find jurisdiction without a hearing, well then he doesn't know what this Commission does.

Mr. Shogan then states that Mr. King has threatened to sue him for attorney's fees. Mr. Cronin states that is not before them.

Amina asks about his allegation that the Mayor made about Paragraph D, where the Mayor made on several occasions, but it did not refer to specific conduct. She confirms that he has not identified a specific instance or any words the Mayor had said. She asked Mr. Shogan if he could identify any statement that the Mayor said. Joe said they need to ask Council President Stuckart all of that, stating, if they are looking for facts... specifics, you need to bring him in. He requests the Commission subpoena Mayor Condon. He would like to question him under oath. If they

don't, he cannot clarify what for them what he had meant. He thinks it's one sided to ask for evidence that they can produce, but he cannot, and then they don't produce it. Shogan doesn't have the power to bring Stuckart in for questioning but the Commission does have that power.

Amina is withdrawing her motion tabled earlier. Now she makes a motion to dismiss because it was already decided in the Pendleton case that, that even if the facts were true, the violation was minimal. Her other motion is to dismiss both paragraph D and E complaints. Shogan failed to provide sufficient detail.

Mr. Shogan states he will be back again and leaves.

Sarah seconds the Motion on Section E for cause of insufficient detail. Motion passes, three to one with Brian opposing.

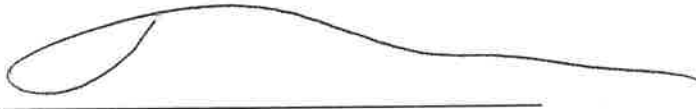
As to the Motion on Section D, is there any motion to dismiss? Brian asks if there are any notes as to Paragraph D, Dennis states that it was technically an issue re dismissed earlier that evening. Brian and Amina disagree that it was that same issue exactly.

Mr. Cronin asks if there is anything further for discussion as to Paragraph D

Milt asks if what is left before the Commission is only paragraph D which is basically the same allegation that was dismissed in the Pendleton complaint. Pendleton had provided the Spitzer complaint, wherein the complaint was addressing the Mayor's comment at the news conference. It is the same issue. Brian seconds the Motion to Dismiss listed in Paragraph D. All approve, motion passes unanimously. Amina notes it was based on other grounds other than jurisdiction.

Meeting adjourned at 5:16 p.m.

Reviewed and Approved:

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long, horizontal stroke that tapers off to the right.

Ethics Commission Chair