

**CITY OF SPOKANE ETHICS COMMISSION
MEETING OF DECEMBER 20, 2017**

Dennis Cronin opens the meeting and asks that everyone introduce themselves. There are new members present for the first time today and the purpose of this meeting is, in part, to provide a kick off / review of the Ethics Commission guidelines and any matters or issues before them.

Dennis introduces himself. Around the table, are: Rebecca Riedinger, Staff Liaison, to the Commission, Mike Piccolo, Asst. City Attorney and Staff Attorney to the Commission; Clayton McFarland; Amina Fields;; Sara O'Hare; Michelle Bleek, Brian Steverson and Dennis Cronin, Commission Members. Another new member, Kenneth Hall, arrives a bit later.

The first agenda item is to review and approve the Agenda. After review, a Motion to approve by Brian and seconded by Sarah. All in favor. Agenda approved.

Dennis asks Michelle Bleek to introduce herself and she does. Mr. McFarland also introduces himself. Mr. Hall now arrives and is caught up to speed and then he introduces himself to the Commission. Mr. Cronin welcomes all the new members.

The next agenda item is to approve the Minutes from prior meetings. The July 12th minutes were signed, as they had only been reviewed and approved at the last (telephonic) meeting and not signed. The July 21 minutes are reviewed and Amina moved to approve them which was seconded by Mr. McFarland. All approved. The minutes are approved.

The Third item on the Agenda was the retreat outline. Mike Piccolo stated he will provide a review of the matter that will be immediately before them. But, first, he reviews the materials he has provided, by way of orientation to the workings of this Commission. The packet includes, pertinent portions of the SMC that are important to know for their work. Mike reviewed the Commission member terms and the timing of terms. Attachment 2 is the Ethics Code. Mike says he has highlighted pertinent portions for their review. First, there is material as to how the Ethics Codes applies to employees who are subject to the code. Not all employees are subject to the code. Police have their own Ethics Code for instance. Local 270 is not subject to the Ethics Code. Attachment 3 is Prohibited Conduct by City employees. The code includes issues regarding conflict of interest and other matters and penalties for any ethics code violation. This material also includes a timeline that the Commission will use if they receive a complaint and what steps they would undergo to review that complaint. Mike also reviewed the confidentiality issues around public records requests and advised that all communications with them are and will be a public record, where the city would have to produce it under a Public Records Request. Mike reviews the Open Meetings Act and guidelines for the new members as well and explains what behavior constitutes a meeting. He also warned how they need to be aware when they become grouped together, outside of a scheduled meeting, because with 4 out the 7 members gathering together – it could constitute a public meeting. So, they will need to be careful of those appearances. Mike also asked the members to complete watching their online training videos and to advise Becky when they have done so, and we will print their certificate of completion and file it the clerk's office. That certificate will cover a four year term. Mike also provides and reviews Roberts Rules of Order for the members. Milt arrives at 4:00 p.m. while Mike explains the last two packets of information he is providing were regarding the Minutes from the previous Meetings

regarding Joe Shogan's complaint in order to catch them up to speed on the matter. There is also a second packet that contains the pleadings that have been filed under Joe Shogan's complaint against Mayor Condon.

Mike introduces Milt Rowland and Milt provides a little of his background as an attorney and how he has worked with the Commission. The Commission then takes a five minute break before they begin further discussions.

Dennis reconvenes the meeting. Milt then states that there has been a lot of information to handle today. However, he would like to explain how it is that he has represented the Commission for the Complaint against Mayor David Condon and the status of that Complaint.

Milt recalls the series of events where complaints had been brought against Mayor Condon, essentially for dishonesty. A couple of years ago there were a number of complaints filed, serially, against the Mayor. James King represents the Mayor in this matter and by the time Milt came along, many of those complaints against the Mayor had been dismissed. Milt notes it would be particularly burdensome to have to defend a set of serial complaints about the same subject area. The complainants essentially allege the same thing against the Mayor – dishonesty.

One thing that became apparent was that it is burdensome to have to respond to the same setting allegations about the same subject area- to have to respond/deny the claim over and over. It is possible that the first complaint may have not been well set forth, so it was dismissed. But that would not mean that they all should be dismissed. Or maybe they would be consolidated into one general complaint so as to not have to have continual hearings regarding a complaint for the same subject matter. However, Mr. Shogan would not be / should not be denied a review under his own complaint. Milt talks about the issues around multiple complaints. One thing Milt did was to propose some revision to the ethics code, in part, with this in mind, that, if it looks like there are several complaints regarding the same set of facts, that they should be consolidated, and not reviewed individually. And Milt states we must remember the burden to the Mayor too, having to defend over and over the same fact pattern of acts / complaints.

Milt explains the Complaint process for the Ethics Commission – and how the first meeting regarding a complaint would be to determine jurisdiction. So, the way things have been envisioned was the EC procedures would be informal in its processes. Up to now, the other allegations under this same complaint were dismissed or settled.

However, Milt states that we now have a very complex set of allegations, where at least one side claims there was dishonesty by the Mayor, where the Mayor says that is not true and filed Motions to Dismiss.

The rules of procedure gives this body discretion. They did not apparently contemplate a complaint such as this. But they (the Commission) have subpoena powers. They have all the powers necessary to have a "trial". But, there are a number of things that are not clear – implied powers.

The one thing nobody wants is to have a decision passed on implied powers and then have the aggrieved party go to Superior Court and get an Order of Mandamus to require you to hold a whole different kind of hearing other than the one you have held. It wastes everybody's time and money and that is not really what the Ethics Commission was designed to do. For something like Ethics in Government, those are not the kinds of things we want to do. Milt repeats he is not talking about Joe Shogan's complaint specifically.

There are some things they can do in response to a complaint. One, they can dismiss the case on any one of different grounds- one, for instance that the City Attorney had advised them to so act.

Milt tells the story of daycare at a Youth Center where care providers left a child in a play tube and he had fallen asleep. The child was fine, but still, CPS issued a finding that the care providers were guilty of child abuse/neglect. So you can see the implications of their decision for that employee - Good luck ever getting a job in that field with that kind of finding against you. So, you can see the political implications with that kind of finding for someone in that position. But you can make a finding. Or if someone has already been subject to a complaint for the same acts you may dismiss because it was addressed already. Or if there is more than one complaint, regarding the same fact pattern, you can treat them as one complaint.

Dennis addresses the issue of Pre-Hearing Orders and what will take place.

Milt addressed No. 11, stating the Commission is not entirely bound by its precedence – or previous decisions/findings. Anyone subject to the Commission deserves a fair warning what is expected of them. When a person files a complaint with the Commission, there are certain things in response that they can expect.

The Commission can act in three ways in response to a complaint:

- 1) Conduct an investigation
- 2) Act by Rule
- 3) Adjudication / Order

And it is more fair to them, as members, to have a guidelines directing them how to handle their different matters.

Basically, the Commission was set up to address citizens' complaints against certain (non-union) city employees. It is more fair to all to have procedures that will be followed. The adjudication process tries to divide the litigation in several discreet stages. A hearing is less formal than a trial in court.

What kind of evidence / Standard of Proof is there?

For instance, trial lawyers make a big distinction between hearsay and other testimony, and there are relevance issues, a variety of things, but which you are being asked to consider. There may be medical records for example.

We are trying to be more clear what (facts/evidence) to rely upon to help you make your decision.

The standard of proof, there is a burden, but for instance, if Mr. Shogan's evidence is clear and convincing then you should find in his favor.

There are rules of evidence they will have to consider, being asked to review, in some cases they look at medical records, and the report of doctors. That is the kind of thing people rely upon in looking for a finding. So if the evidence supports a claim, then you find for the claim, if not, you find against it.

Basically the draft pretrial order ensures that all parties get the evidence, briefing and scheduling that everyone needs to get ready for the hearing. It would not be fair to have people to show up and have a surprise witness or, wait until hearing to request a subpoena. You should have that set up prior to.

Finally, the definitions, one of the things we saw in the Spokane NOW case, the parties argued over the definition of dishonesty / honesty. Or, lay people often don't know what the word stipulation means. There are terms that must be considered. Milt closes and asks if there are any questions. Amina asks about details of such terms frivolous and dismissing a case. Milt states a frivolous complaint has two parts, no basis in fact or brought for an improper purpose.

Reviewed and approved this 17 day of 1, 2018.



Ethics Commission Chair