

CITY OF SPOKANE ETHICS COMMISSION

Neil Muller,

Complainant,

vs.

Zack Zappone,
Mark Carlos,
Jeff Gunn, and
Betsy Wilkerson,

Respondents.

AMENDED CONSOLIDATED
PREHEARING ORDER

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

The Spokane Ethics Commission met on July 26, 2023, and after finding the Ethics Commission has jurisdiction to consider the above-entitled matters, issued a "Consolidated Prehearing Order," on August 25, 2023, regarding the hearing on the complaints filed with the Ethics Commission by Neil Muller. Said Order is being amended as follows.

I. DATE, TIME AND LOCATION OF HEARING.

The hearing on these matters will be held on November 15, 2023, at 2:00 p.m. at Spokane City Hall at a meeting location to be identified in the meeting notice.

II. BRIEFING SCHEDULE.

1. The complainant shall submit an opening brief for each complaint by October 25, 2023, addressing the allegations set forth in each complaint and

1 identifying the alleged violation(s) of the Code of Ethics.

2 2. Each respondent shall submit an individual reply brief pertaining to their
3 respective complaint by November 1, 2023.

4 3. The complainant shall submit a rebuttal brief to each reply brief by
5 November 8, 2023.

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

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

12 6. Service upon the Ethics Commission shall be accomplished by
13 electronically serving the pleadings and documents with the legal counsel for the
14 Ethics Commission from the City Attorney's Office at mpiccolo@spokanecity.org.

15 7. Objections to any material filed by the parties shall be submitted to the
16 Ethics Commission by November 10, 2023.

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

18 9. Any party objecting to a Commissioner's participation due to an alleged
19 conflict of interest shall submit their written objection by October 25, 2023. Any
20 responses by any party to the objection shall be filed by November 1, 2023. The
21 Commission shall address the objection at the hearing pursuant to the Code of Ethics,
22 Chapter 1.04A SMC, and the Commission's Policy and Procedures Manual.
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III. TESTIMONY.

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2 1. Pursuant to SMC 1.04A.110 F. 1, the Commission shall consider
3 additional evidence submitted by the parties including the submission of affidavits,
4 exhibits and documentary evidence. By November 8, 2023, each party shall notify
5 the Commission and the opposing party if the person signing the affidavit (the
6 "Affiant") shall be required to attend the November 15, 2023, hearing in order to
7 provide the opposing party the opportunity to cross-examine the individual. The party
8 submitting the affidavit shall assure the attendance of the Affiant.
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11 2. If a party intends to call a witness other than an affiant, that party shall
12 submit the name or names of all witnesses to the Ethics Commission and serve the
13 opposing party with the name(s) of the witness by October 25, 2023. Any objections
14 must be served and filed before November 8, 2023.
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16 3. If a party desires to subpoena a witness, that party shall submit the
17 proposed subpoena to the Commission two weeks in advance of the hearing. The
18 Commission will meet in special session two weeks before the hearing to decide
19 whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH
20 PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL
21 BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission
22 does not guarantee the attendance of witnesses; its subpoenas are not self-
23 executing.
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IV. HEARING PROCEDURE.

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2 1. Only the complainant and the respondent or their legal representatives
3 may participate at the hearing.

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

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

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9 4. The Commission will next hear and rule upon any motions to dismiss or
10 other similar dispositive motions prior to arguments on the merits. The party submitting
11 the motion shall proceed first with presenting their argument in support of the motion.
12 The opposing party shall respond to the motion followed by rebuttal by the moving
13 party.
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15 5. The Commission shall proceed to a hearing on the merits of each
16 complaint for any remaining allegations or issues, as follows:

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

20 (b) Presentation of Complainant's Case.

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

22 (d) Questions by Commission.

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

24 (f) Complainant rests.

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

27 (h) Presentation of Respondent's Case.
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1 (i) Cross Examination of witnesses or affiants by Complainant.

2 (j) Questions by Commission.

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

4 (l) Respondent rests.

5 (m) Final Arguments.

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

10/10/2023

14 Sarah O'Hare, Co-Chairperson

Date

15
16 Clayton McFarland

10/09/2023

17 Clayton McFarland, Co-Chairperson

Date