

CITY OF SPOKANE ETHICS COMMISSION

Neil Muller,

Complainant,

vs.

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

Respondents.

SECOND 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. An Amended Consolidated Prehearing Order was issued on October 10, 2023. The Prehearing Order is being amended a second time, as follows.

I. DATE, TIME AND LOCATION OF HEARING.

The hearing on these matters will be held on December 14, 2023, at 2:00 p.m. at Spokane City Hall at a meeting location to be identified in the meeting notice.

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II. BRIEFING SCHEDULE.

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2 1. The complainant shall submit an opening brief for each complaint by
3 November 22, 2023, addressing the allegations set forth in each complaint and
4 identifying the alleged violation(s) of the Code of Ethics. The complainant may rely
5 upon his opening briefs previously filed on October 25, 2023, and, therefore, would
6 not need to resubmit his opening briefs.
7

8 2. Each respondent shall submit an individual reply brief pertaining to their
9 respective complaint by November 29, 2023.
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11 3. The complainant shall submit a rebuttal brief to each reply brief by
12 December 6, 2023.
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14 4. The respondents' reply brief may include any motions to dismiss. The
15 complainant's rebuttal briefs may include a response to any motions to dismiss.
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17 5. The party filing a brief shall file the original brief with the Ethics
18 Commission. Service may be completed electronically by sending the pleadings,
19 along with all attachments, exhibits, affidavits or other documentation via e-mail by
20 the deadlines set forth above.
21

22 6. Service upon the Ethics Commission shall be accomplished by
23 electronically serving the pleadings and documents with the legal counsel for the
24 Ethics Commission from the City Attorney's Office at mpiccolo@spokanecity.org. The
25 Commission shall forward the submitted documents to the other parties.
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27 7. Objections to any material filed by the parties shall be submitted to the
28 Ethics Commission by December 8, 2023.
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30 8. Affidavits and exhibits not objected to will be deemed admissible.

9. Any party objecting to a Commissioner's participation due to an alleged conflict of interest shall submit their written objection by November 22, 2023. Any responses by any party to the objection shall be filed by November 29, 2023. The three objections previously received by the Commission on October 25, 2023, shall remain as submitted and do not need to be resubmitted. The Commission shall address the objection at the hearing pursuant to the Code of Ethics, Chapter 1.04A SMC, and the Commission's Policy and Procedures Manual.

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 December 6, 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 December 14, 2023, hearing in order to provide the opposing party the opportunity to cross-examine the individual. The party submitting the affidavit shall assure the attendance of the Affiant.

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

3. If a party desires to subpoena a witness, that party shall submit the proposed subpoena to the Commission two weeks in advance of the hearing. The Commission will meet in special session two weeks before the hearing to decide

1 whether to issue the subpoenas presented. IT IS THE RESPONSIBILITY OF EACH
2 PARTY TO ASSURE THAT ANY WITNESS WHOSE TESTIMONY IS SOUGHT WILL
3 BE AVAILABLE AND WILL ATTEND THE FULL HEARING. The Ethics Commission
4 does not guarantee the attendance of witnesses; its subpoenas are not self-
5 executing.
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7 **IV. HEARING PROCEDURE.**

8 1. Only the complainant and the respondent or their legal representatives
9 may participate at the hearing.
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11 2. Witnesses, if any, shall testify under oath.

12 3. The Commission will hear arguments concerning any objections to
13 exhibits or witnesses prior to any motions or arguments on the merits.
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15 4. The Commission will next hear and rule upon any motions to dismiss or
16 other similar dispositive motions prior to arguments on the merits. The party
17 submitting the motion shall proceed first with presenting their argument in support of
18 the motion. The opposing party shall respond to the motion followed by rebuttal by the
19 moving party.
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21 5. The Commission shall proceed to a hearing on the merits of each
22 complaint for any remaining allegations or issues, as follows:
23

24 (a) Opening Statement (non-argumentative summary of evidence to be
25 presented) by Complainant.
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27 (b) Presentation of Complainant's Case.

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

29 (d) Questions by Commission.
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- 1 (e) Follow-up Questions by Complainant and Respondent.
2 (f) Complainant rests.
3 (g) Opening Statement (non-argumentative summary of evidence to be
4 presented) by Respondent.
5
6 (h) Presentation of Respondent's Case.
7 (i) Cross Examination of witnesses or affiants by Complainant.
8 (j) Questions by Commission.
9
10 (k) Follow-up Questions by Complainant and Respondent.
11 (l) Respondent rests.
12 (m) Final Arguments.

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14 6. The Commission shall decide issues before it based upon the
15 preponderance of the evidence standard, which provides that a violation must be
16 more likely than not to have occurred, before the Commission will hold for the
17 complainant. SMC 1.04A.110 F. 2.
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19
20 Sarah O'Hare

11/9/2023

21 Sarah O'Hare, Co-Chairperson

Date

22
23 Clayton McFarland
24 Clayton McFarland, Co-Chairperson

11/9/2023
Date