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September 16, 2016

Via email

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Re: Cole Ethics Complaint

Dear Parties/Participants:

As you may know I was out of the office on vacation until September 6. During that time, the disqualification/recusal question raised by Mr. Cole was addressed and resolved in Superior Court. Because when I left the office the question of whether I could proceed as ethics hearings officer was still pending, I have only on my return delved into the Complaint.¹ In particular I have reviewed preliminarily the Complaint itself as received from the City Attorney as a 99 page PDF, as well as, of course, PTMC chapter 2.80.

As a result of my preliminary review, I have the following requests:

¹ My only action in the matter while on vacation was submission of a declaration to the Court concerning three questions about my background Mr. Cole had raised in his submissions to the Court.

1. The Complaint refers to “over two thousand pages and photos of supporting evidence,” but does not provide it. Cplt at 2. This wording appears to be an attempt to incorporate materials into the Complaint by reference. However, the Code emphasizes that a Complaint must “set forth specific facts with precision and detail.” It is not the role of the hearings officer to search for and pick out from two thousand pages (not provided) items that could conceivably support a Complaint. That is the Complainant’s role and this request gives the Complainant an opportunity to fulfill it. Therefore, if Mr. Cole would like to include for my consideration prior to an Initial Determination any of the “over two thousand pages,” then they should be provided (with copies to the other parties) no later than 5:00 pm on October 7, 2016. My preference is that these materials be provided as email attachments. The time allotted is ample so that Mr. Cole can go through the material and, rather than (figuratively) drop it all on my desk, select germane items and explain with specificity, precision, and detail how they support the Complaint and demonstrate a specific Code violation. This submission by the Complainant is important as it will be part of my review -- along with, inter alia, other parties’ responses -- in making an Initial Determination.
2. The other parties will have until 5:00 pm on October 28 to provide responsive submissions, including identification of any Complaint elements that in their view should be dismissed on an Initial Determination for reasons other than jurisdiction along with a detailed explanation as to why.
3. The responding parties should also address in writing by October 7 at 5:00 pm whether they believe that any aspects of the Complaint are not subject to hearings officer review and resolution. This should include addressing whether, if any of the responding parties are no longer City employees, there is jurisdiction over a complaint about them under PTMC Chapter 2.80. Mr. Cole will then have until October 28 at 5:00 pm to provide a response.

All should consider in making their respective submissions that information you may take for granted is not known to me. For example, the Complaint seems to express concern about interactions between Mr. Peterson and Mr. Hoskins. What is not explained clearly, although some information can be inferred, is the chain of command and department context among the various respondents such as Mr. Peterson and Mr. Hoskins. Are they in the same office or over-all Department? Does one have any official role in supervising the other? These two names are not mentioned because I have reached any conclusions: they are just names among several cited so I am using them in an example. What is important is that all understand that I was chosen as the ethics hearings officer in part because I am not a Port Townsend insider so do not know the particular chain of command characteristics of your City departments. So, to be helpful, your submissions must provide clear context. And it goes without saying that context based on speculation will not be as helpful as context based on demonstrable facts.

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The Complaint includes considerable sections of argument and analysis, interspersed with a few pages of documentation. In at least one instance that documentation is fragmentary: an excerpt out of a superior court Answer, rather than the complete document or the lawsuit to which it responded. My practice is to decide for myself what an item's content means rather than to accept another's explanation based on excerpts and assertions. All parties should bear this in mind in terms of providing information on which a hearings officer can make an independent analysis and decision.

In light of the delay necessitated by resolution of the recusal/disqualification request, my Initial Determination could not have been issued within ten days in any event. Further, in light of the questions/requests posed above, it is also my determination as hearings officer that it is necessary that a formal Initial Determination under Chapter 2.80 abide my receipt and review of the submissions as specified above.

Please make sure to copy all others on any communications with or submissions to me. Meanwhile, thank you for your cooperation.

Sincerely,

EGLICK & WHITED PLLC

A handwritten signature in black ink, appearing to read 'P. Eglick', written in a cursive style.

Peter J. Eglick
Port Townsend Ethics Hearings Officer

Cc: City Attorney SGross@cityofpt.us; ALong@cityofpt.us