



Seattle Civil Service Department

CIVIL SERVICE COMMISSION MEETING AGENDA

The agenda is subject to change to address immediate Commission concerns.

DATE: Monday, March 10, 2025

TIME: 2:00 p.m.

LOCATION: In person @ **City Hall L280**-Boards and Commissions Room and Remote via **Teams**

Teams Meeting Login:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MGI3YTE0ODQYTViYy00NzZiLTk1ODItYjc4YTdhMDVjNmQ0%40thread.v2/0?context=%7b%22Tid%22%3a%2278e61e45-6beb-4009-8f99-359d8b54f41b%22%2c%22Oid%22%3a%220cc67185-726d-44dc-b9dc-4e989f1dfbad%22%7d

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Directions to Boards & Commissions Room

600 4th Avenue, Seattle, WA 98104
Room L280

The Boards & Commissions Room is located on Floor L2 of City Hall.

From Fourth Avenue:

- Take the elevator to Floor L2R
- Walk forward until there is a second set of elevators on your left and large hallway to your right.
- Go right down the large hallway.

From Fifth Avenue:

- Take the main elevators (set of four) to Floor L2
- *If there is a door immediately to your right and no large hallway in front of you when you get off the elevator, go through the door to your right. The large hallway will then be to your left.*
- Walk forward down the large hallway.

The Boards & Commissions room will be on your right about two-thirds of the way down the hallway.

Civil Service Commission
Monthly Meeting
March 10, 2025 @ 2:00 p.m.
City Hall L280-Boards and Commissions Room and Remote via Teams

1.	CALL TO ORDER LAND ACKNOWLEDGEMENT	Commission Chair (CSC 2.05)
2.	ATTENDEE INTRODUCTIONS	
3.	PUBLIC COMMENT	
4.	APPROVAL OF MINUTES	January 13, 2025, CSC Monthly Meeting (Pages 3-4)
5.	GUEST SPEAKER	Emma Phan, Sr. Ombudsman & Head of ADR (Pages 5-7) Office of the Employee Ombudsman
6.	UPDATES/DISCUSSION	A. EXECUTIVE DIRECTOR BUDGET & DEPARTMENTAL UPDATES 1. Budget Update (Page 8) 2. Department Update B. CASE STATUS REPORT/APPEAL UPDATES (Page 9) 3. Brown v. Parks-CSC No. 25-01-005A (Pages 10-17) 4. Reichenbach v. SPU-CSC No. 23-03-002 <i>Delegated to the Office of the Hearing Examiner (CSC 5.08)</i>
7.	ACTION ITEMS	
8.	EXECUTIVE SESSION	May be cancelled if not needed
9.	OLD/NEW BUSINESS	
10.	ADJOURNMENT	Next Meeting Date: Monday, April 21, 2025-Monthly Meeting



CITY OF SEATTLE
CIVIL SERVICE COMMISSION

Minutes

January 13, 2025 @ 2:00 PM (Monthly Meeting)

Location Teams and at SMT 1679

- | | | |
|----|---|---|
| 1. | CALL TO ORDER
LAND ACKNOWLEDGEMENT | Commission Chair (CSC Rule 2.05)

Commission Chair Ray Ceaser called the meeting to order at 2:02 p.m. |
| 2. | ATTENDEE INTRODUCTIONS | Chair Ceaser gave attendees an opportunity to introduce themselves. The following people were present: CSC Commissioners: Ray Ceaser and Denise Wells. Commission Staff: Andrea Scheele, Executive Director, Sarah Butler, Operations & Policy Advisor, and Teresa Jacobs, Executive Assistant. Commission Counsel/ Assistant City Attorneys: Joe Levan and Anne Vold. Not present: Commissioner Mary Wideman-Williams. |
| 3. | PUBLIC COMMENT | There was no written comment, and no members of the public requested to give public comment. |
| 4. | APPROVAL OF MINUTES | December 16, 2024-CSC Monthly Meeting
Commissioners reviewed the minutes from the December 16, 2024, meeting. Commissioner Ceaser moved to accept the minutes as written. Commissioner Wells seconded the motion. The minutes were approved by acclamation. |
| 5. | ACTION ITEMS | CSC 2025 Proposed Meeting Dates: The commission reviewed and agreed on the proposed dates for 2025. Commissioner Ceaser moved to accept the dates for 2025. Commissioner Wells seconded the motion. The motion passed. |
| 6. | EXECUTIVE SESSION
UPDATES/DISCUSSION | The commission did not go into Executive Session.

EXECUTIVE DIRECTOR BUDGET & DEPARTMENTAL UPDATES
a. 2025 Outreach, Sarah Butler, Operations and Policy Advisor
b. Budget Report
c. Department Update

CASE STATUS REPORT/APPEAL UPDATES
d. Reichenbach v. SPU-CSC No. 23-03-002
<i>Delegated the Office of the Hearing Examiner (CSC 5.08)</i> |

7. OLD/NEW BUSINESS

There was no old/new business.

8. ADJOURNMENT

The meeting ended at 3:04 p.m.

Minutes submitted **March 10, 2025,** by: Teresa Jacobs

Minutes ☐ Approved ☐ Amended

March 10, 2025, by: CSC

Signed by CSC Commission Chair, Ray Ceaser

Monthly meetings are recorded; after January 1, 2024, they may be found at:

<https://www.youtube.com/channel/UCLjvUwCTxoAH-cC4Vt1fMTA>

Previous recordings may be requested via the public records portal at <https://www.seattle.gov/public-records>

A blue-tinted photograph of the Seattle skyline, featuring numerous skyscrapers and the city's waterfront, serves as a background for the top section of the page.

Office of the Employee Ombud Overview for First-Time Visitors

At the Seattle Office of the Employee Ombud (OEO), we want all City employees who work with our office to understand our role and central office tenets. We want you to feel comfortable understanding who we are, how we work, and what you can expect from us. If you have any questions, please ask our staff at any time.

Our office adheres to the Standards of Practice of the International Ombuds Association, which are:

Confidentiality

The OEO strives to maintain confidentiality of those who visit our office. Just as any other public office, we are subject to the Public Records Act, and there is a chance that written information shared with our office can be included as part of a Public Disclosure Request. We take precautions throughout our process to protect the people we serve, including anonymizing any notes we might take and minimizing the creation of records, such as emails or texts, that could be subject to a PDR. Any emails or text messages sent to our office could be subject to a public disclosure request, and as such, we do not recommend the use of email or text messages to communicate confidential information. Instead, we suggest that all visitors wishing to contact us do so by phone or submit documents to our office to do so via our Portal at oointake.seattle.gov in an anonymous report.

Impartiality

The OEO does not act as an advocate for any individual visiting our office, or for the City. We attempt to work with all parties to achieve their desired respectful resolution. We use the term impartial rather than neutral as we are not acting on behalf of one party or another, but we are not neutral on issues of race and social justice. When the OEO participates in a meeting, it is as a facilitator and with the full knowledge and consent of all parties to participate in the facilitation process. The OEO cannot act as a witness, unless compelled to do so by law, since we do not keep identifying records and do not participate in formal processes. It's up to the OEO's discretion whether to be an observer when requested.

Independence

As an independent department, the OEO reports directly to both the Mayor and City Council. We provide a yearly Annual Report (available on our SharePoint site) offering a review of our office's work, statistics, Systemic Trends and Recommendations.

Informality

The OEO does not conduct formal investigations or participate in formal processes. If a visitor comes to our office and is also involved in an investigation, we will pause or close their case until the investigation is concluded. The OEO makes referrals to formal processes, but cannot become involved with, or influence, the course of a formal process, such as a disciplinary or appeals process. Union represented employees are advised to report grievances with their union first. The OEO is not a channel for formal notice, and we are not mandatory reporters. All interaction and participation with our office and process is voluntary.

What is the Employee Ombud Office?

The Office of the Employee Ombud provides a safe space for you to report workplace issues, discuss concerns, and explore options. Our goal is to help you develop constructive strategies for dealing with conflict and find answers to questions about available programs and resources. We use a trauma-informed approach to provide support, validation, and de-escalation to City employees.

Who can use the Ombud Office?

The Office of the Employee Ombud is offered as a no-charge service to the entire City of Seattle Employee community.

What is an ombudsperson?

An ombudsperson is a neutral person who can assist in resolving concerns in an informal, confidential, impartial, and nonescalating manner. The ombudsperson provides services designed to support individuals and groups, optimize the effectiveness of programs and services, and enhance the overall learning and workplace environments. The ombudsperson does not provide legal advice or psychological counseling.

What procedures or approaches does the ombudsperson use to provide help?

To assist a visitor, the ombudsperson employs a wide variety of informal approaches, including but not limited to:

- Listening
- Informal consulting
- Informal mediation
- Suggesting referrals to existing services
- Coaching
- Facilitated dialogue
- Shuttle diplomacy

How is the Ombud Office different from other Employee services?

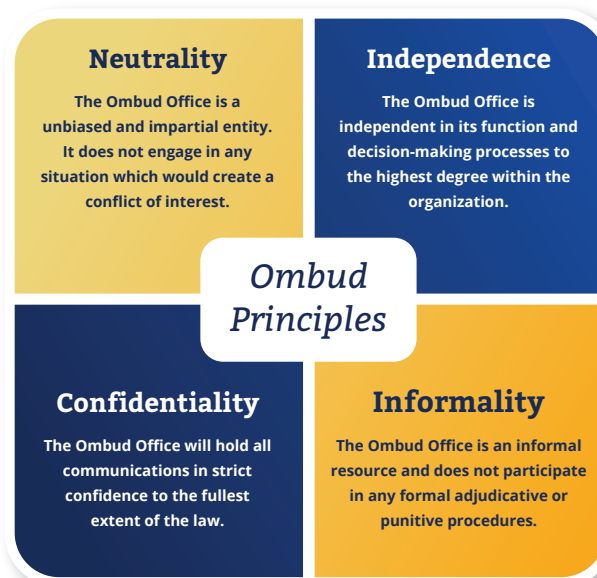
The Office of the Employee Ombud is a designated confidential resource for all employees. Additionally, the services provided by the Ombud Office are designed to complement rather than replace other services such as formal investigative processes. We are

an informal and confidential resource here to help amicably manage conflict with an intention to deescalate, or to identify other available options.

The Ombud Office offers a good alternative if you:

- Would appreciate a confidential sounding board
- Want help thinking through how to deal directly with a concern
- Are uncertain about taking a problem through other established channels
- Are unsure who to talk to about a problem or concern
- Want to strategize how to avoid a small problem becoming a big problem
- Want an informal non-escalating approach where the next steps remain within your control
- Need a fresh, impartial perspective
- Want to discuss strategies or possible options and resources for resolving a concern
- Want to maintain the greatest flexibility in addressing a concern
- Would like help communicating with another person or group (e.g., supervisor, co-workers, etc.)

Note: The OEO will not conduct investigations.



City of Seattle **Office of the Employee Ombud**

Frequently Asked Questions

OFFICE OF THE EMPLOYEE OMBUD

City Hall
600 4th Ave
L-290 (next to Board & Commissions room)
Seattle, WA 98124
Phone: 206-684-4873
Email: ombud@seattle.gov

Am I required to visit the Ombud Office before I contact other services?

The Office of the Employee Ombud is an entirely voluntary service and you are never required to contact the ombudsperson before seeking the assistance of other programs. If you are not sure which other programs may be available to help you resolve a particular issue or concern, you may visit the ombudsperson, who can discuss your concern and we will suggest options, approaches, and other resources.

Does visiting the Ombud Office put the City on notice?

No. Because of its confidentiality, impartiality, and independence, the Ombud Office is not an "office of notice" for reporting discrimination, crimes, or allegations of violations of law (such as a Title IX violation). If you want to put something on the record or obligate the City administration to respond in some way, you must pursue alternative avenues. We can work with you to figure out what those alternative avenues might be, given the situation.

Are there exceptions to Ombud Office confidentiality?

Confidentiality is an important principle for the Ombuds. The Standards of Practice and Code of Ethics of the International Ombuds Association provide standards for operating the Ombuds Office. These standards establish an important exception to confidentiality: when, in the judgment of the ombudsperson, failure to disclose information creates an imminent risk of serious harm to the visitor or to others. Additionally, the Ombuds Office will disclose information where expressly required by state or federal law (e.g., in cases of child abuse or neglect) or if ordered by a court with appropriate authority. Confidentiality extends not only to the spoken word but to all other forms of communication to and with an Ombud in their works. This includes information regarding whether someone did or did not contact the Ombud office. Such information may be shared if the complainant chooses not to request anonymity, according to State of Washington Legislation HB 2020.

Can I remain anonymous?

Confidentiality is an essential characteristic of ombud work. An ombud will not voluntarily disclose outside the ombud office information provided by visitors (including the visitor's identity) if the complainant actually requests his or her identity or any identifying information not be disclosed. According to State of Washington Legislation HB 2020, without this explicit request, the information provided is disclosable. At OEO, our standard of practice will be to offer every complainant a chance to decide if they wish to keep their identifying information private. If you wish to remain anonymous, the best way to communicate with OEO is in-person or via phone. Please note that if you send an email, ensure that you do not include confidential information.

Is the ombudsperson a "mandatory reporter" for Title IX or prohibited discrimination?

No. The ombudsperson is a designated confidential resource at the City of Seattle and is therefore not obligated to report situations that may implicate Title IX or prohibited discrimination. Additionally, the ombudsperson is not a "security authority," and thus does not pass along information about crimes that may have been committed. The only exceptions to confidentiality of the Ombud are child abuse or neglect; imminent risk of serious harm to the visitor or another person; or the order of a court with appropriate authority.

Can the ombudsperson come with me to my performance review?

No. The ombudsperson does not participate in formal processes, such as performance reviews or disciplinary action. Additionally, the ombudsperson will not participate as a "witness" in a meeting, because the ombudsperson cannot be called upon afterward to verify that something was or was not said. This is not to say that you must face all these processes and meetings alone. Come talk with us about your options in these situations.

Does the ombudsperson maintain records?

We will keep short-term working notes as necessary to keep track of commitments and follow-up activities. The ombudsperson does keep limited non-identifiable

information so that the program can track general trends and work with Employee governance and administration to identify opportunities for systemic improvements.

Whom do I contact if I have other questions about the Ombud Office?

You may call the Office of the Employee Ombud at **206-684-4873** or send an e-mail at **ombud@seattle.gov**. Please do not send confidential information via email.

What happens in a visit?

The Ombud will open the visit with a description of what the office does, and the principles of confidentiality, independence, informality, and impartiality to ensure that you are aware of what the office can and cannot do. We will then ask you to describe the issue you wish to discuss. You are free to disclose as much or as little as you want, although we find that the more information one can provide the better. We are here to support you in finding a solution.

What should I bring with me to visit?

There is nothing that you are required to bring. However, you are welcome to bring documentation that helps you explain the issue you wish to discuss. The Ombud will not keep any of the documents you bring with you.

How long is a visit? How many will there be?

Visits are scheduled for 30 minutes. There is no limit to how many visits you can schedule and you may see the Ombuds until the matter is resolved. We generally schedule a 30 minute consult; mediation and other processes take longer and will be scheduled as needed on a case-by-case basis.

See the full OEO FAQs on our InWeb for more information!

seattlegov.sharepoint.com/Ombuds/

2025 Budget to Actuals Report-As of March 4, 2025

FISCAL_YEAR
ACCOUNTING_PERIOD
ACCOUNT_TYPE

Values									
BSL_DESCR	PROJECT_CODE	FUNDING_CODE	ACCOUNT_CODE	Sum of Adopted		Avail. Bal. Before	Avail. Bal. After	% Spent Before	
				Budget [a]	Sum of Actuals [e]	Encum	Encum		
						[a]+[b]+[c]+[d]-[e]	[a]+[b]+[c]+[d]-[e]-[f]		
BO-VC-V1CIV - Civil Service Commission	VCADMIN - Leadership and Adm			964,071.68	153,340.67	810,731.01	810,731.01	16%	84%
	VCCIV-FIREEXAMS - PUBLIC SAF			907,412.34	3,880.37	903,531.97	903,531.97	0%	100%
	VCCIVILSV - Civil Service Commi			38,753.52	50,452.74	(11,699.22)	(11,699.22)	130%	-30%
	VCCIV-POLEXAMS - Police Civil S			907,412.46	-	907,412.46	907,412.46	0%	100%
Grand Total				2,817,650.00	207,673.78	2,609,976.22	2,609,976.22	7.37%	92.63%

FILED/OPEN:

CASE NUMBER	APPELLANT	RESPONDENT DEPARTMENT	DATE FILED	RULE/CODE	ISSUE	STATUS	PRESIDING
25-01-005A	Brown	Parks	2-15-2025	City of Seattle Personnel Rules Violations: PR 1.3.2.D.3; PR 1.3.2.D.5; PR 1.3.3.A.	Whether suspension was justified.	Prehearing TBD	Executive Director
23-03-002	Reichenbach	SPU	4-5-2023	City of Seattle Personnel Rules Violations: PR 1.1.2; PR 1.1.7A; 1.1.7B; 1.1.7C	Alleged prohibited behavior by department and flawed investigation.	June 2024 Appeal delegated to the Office of the Hearing Examiner. November 2024, parties were in settlement negotiations. Third prehearing scheduled for February 4, 2025.	OHE

APPEAL TO THE CIVIL SERVICE COMMISSION (DISCIPLINARY)

Appeal No. 25-01-005A

Date Filed February 15, 2025 (11:29 a.m.)

Received by CSC 2/17/2025 *TRJ*

Full Name of Appellant	Work Address
<i>Baraka Jamahl Brown</i>	<i>2000 MLK JR. Way S., Seattle</i>
Residence Address	Work Telephone
[REDACTED]	<i>206-684-4764</i>
City State Zip	Employee ID
[REDACTED]	[REDACTED]
Home/Cell Phone:	Department
[REDACTED]	<i>DPR</i>
Email:	Job Title
[REDACTED]	<i>Tennis Instructor</i>

1. **WHAT ACTION IS BEING APPEALED?**
(CHECK ONE)

☐ Demotion (5.01A)

☒ Suspension ☐ Probation ☐ Discharge (5.01B)

☐ City of Seattle Personnel Ordinance or Rule(s) Violation (5.01C):

What Personnel rule, regulation, or provision, do you believe was violated? *Please see attached*

City of Seattle Civil Service Commissions

Seattle Municipal Tower, 700 Fifth Avenue, Suite 1670 PO Box 94729 Seattle, WA 98124-4729
Tel (206) 437-5425, Fax: (206) 684-0755, <http://www.seattle.gov/CivilServiceCommissions/>

An equal employment opportunity employer. Accommodations for people with disabilities provided upon request.

Reason for this appeal <u>Please see attached</u> 	Remedy Sought (What do you want?): <u>To set aside / overturn their recommendation and remove their disciplinary action from my file.</u>
2. UNION: If you are a member of a union, what is the name of your union? <u>Professional & Technical</u> Local Number: <u>17</u>	<input type="checkbox"/> I HAVE <input checked="" type="checkbox"/> I HAVE NOT filed a grievance on the same issues that I identified in this appeal, with my union or bargaining unit. This matter <input type="checkbox"/> IS <input checked="" type="checkbox"/> IS NOT the subject of arbitration pursuant to a collective bargaining agreement.
3. EMPLOYEE GRIEVANCE PROCEDURE: Did you receive notification of your right to a timely resolution of this grievance from your Department? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (SMC 4.04.070) <input checked="" type="checkbox"/> I HAVE <input type="checkbox"/> I HAVE NOT filed a grievance on the issues that are identified in this appeal, through the Employee Grievance Procedure. (Personnel Rule 1.4.2)	If you filed a grievance through the Employee Grievance Procedure, what was the outcome? <u>The suspension recommendation from HR was upheld.</u>

Please include with your appeal form the **Step 3 Grievance decision** of your employing department and **Investigatory Report from SDHR**, and any documents or correspondence that you have received from the Department related to your appeal. To meet timely filing of your appeal, these documents can be sent after filing this document.

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4. **ATTORNEY/AUTHORIZED REPRESENTATIVE:**

An attorney or a representative is **NOT** required for the appeal process.

Do you have an attorney or another person representing you for this appeal? ☒ YES ☐ NO

If **yes**, please have your attorney submit a **NOTICE OF APPEARANCE** to the Commission Office and the Department.

All documents and information related to the appeal will go to the attorney or representative.

Name: Thomas Noud Firm: N/A

Address:

Email:

5. **APPELLANT:**

If you **do not** have an attorney or a representative, please enter the address where documents related to this appeal should be sent:

Mailing Address: _____

Personal Email: _____

Home/Cell Phone: _____

SIGNATURE OF APPELLANT

Barake J. Brown

DATE

2/11/2025

SIGNATURE OF ATTORNEY OR REPRESENTATIVE:
(IF FILLING OUT THIS FORM):

Thomas Noud

DATE

2/11/2025

City of Seattle Civil Service Commissions

Seattle Municipal Tower, 700 Fifth Avenue, Suite 1670 PO Box 94729 Seattle, WA 98124-4729

Tel (206) 437-5425, Fax: (206) 684-0755, <http://www.seattle.gov/CivilServiceCommissions/>

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Concise Statement of the Reason for Appeal

1. SPR did not conduct a fair and objective investigation in contravention of Personnel Rule 1.3.2.D.3. Specifically, Rochelle Brown tampered with evidence which we intend to prove during the appeals process. We intend to cross-examine Ms. Brown as to why she tampered with the evidence in this case.

In his Step 3 Grievance Report in the section titled “Evidence that Ms. Brown tampered with evidence attempting to manipulate the findings to suit their narrative and create greater damage upon Mr. Brown”, Mr. Bartolome ignores our specific allegation that Ms. Brown tampered with a specific piece of evidence, and instead improperly concludes that:

“However, to the extent that Mr. Brown is alleging that the investigation was not fair or objective in violation of Personnel Rule 1.3.2D.3, the findings of the investigation does not support that the Seattle Parks and Recreation’s investigation was not fair or objective. To the contrary, the findings of the investigation supported that Seattle Parks and Recreation’s investigation into the February 22 incident had produced evidence that Mr. Brown, more likely than not, violated the Personnel Rules and Seattle Parks and Recreation’s Workplace Expectations.”

While we are alleging that SPR’s investigation was not fair or objective in totality, we are also *specifically* accusing Ms. Brown of intentionally tampering with evidence. During the Step 3 grievance meeting with Mr. Bartolome, we showed him the specific document that Ms. Brown tampered with. In his grievance report he completely ignores this occurred, and instead attempts to generalize the allegation. On appeal, we intend to specifically prove that Ms. Brown tampered with evidence to cast Mr. Brown in a negative light.

2. SPR did not conduct a fair and objective investigation in contravention of Personnel Rule 1.3.2.D.3. Specifically, SPR repeatedly ignored substantial amounts of evidence submitted by Mr. Brown, and instead, cherry picked the evidence that suited it’s narrative. For example, in his Step 3 Grievance Report, Mr. Bartolome narrowly focuses on the witness statement provided by Mr. Austin. Mr. Bartholome concludes that Mr. Austin’s statement was moot because SPR found that the evidence of the allegations against Mr. Brown on April 4th was inconclusive and because Mr. Brown’s 2-day suspension is based solely upon his conduct on February 22nd.

This is news to us. First, if the April 4th incident is moot, why did Mr. Williams continue to make allegations and conclusions based upon Mr. Brown's conduct on April 4th? In his Results of Loudermill Hearing, Mr. Williams states:

“During the Loudermill hearing, you referenced the investigator's statement that you volunteered/self-assigned yourself to a canceled class. While I acknowledge that the investigator found the allegation that you engaged in professional misconduct was inconclusive, *there is clear evidence to support that you self-assigned yourself to a canceled class*. There is also evidence that you disregarded your supervisor's request for you and the patron not to be in the same class until the conclusion of the investigation. This, as you are aware, resulted in another incident, which could have been avoided had you followed your supervisor's guidance. I highlight this here because it's another example of your lack of accountability as it relates to the role you played in both incidents.”

Of course, we felt compelled to address this accusation as it is false, completely without merit AND easily dismissed by Mr. Austin's witness statement. Moot or not, we will not allow these types of defamatory statements go unaddressed. However, that was just one example of the many instances where SPR ignored evidence we submitted when reaching their erroneous conclusions. SPR ignored evidence of Mr. Look's bias. SPR ignored evidence of Ms. Brown's bias. SPR ignored evidence that Ms. Brown tampered with evidence. SPR ignored evidence that corroborated Mr. Brown's version of events. SPR ignored that Mr. Maki failed to obtain a witness statement from his coach, Ms. Moreno. SPR ignored the fact that Mr. Maki failed to produce his alleged video. SPR failed to consider that when Mr. Brown initially approached Mr. Maki, it was under the guise of a new rule regarding Unauthorized Lessons. Ignoring evidence is itself evidence of an unfair and biased investigation. SPR, Mr. Williams and Mr. Bartolome conveniently ignore the bulk of our evidence and then assert, despite evidence to the contrary, that the investigation was fair, objective and unbiased.

3. We intend to argue that SPR violated Personnel Rule 1.3.2.D.5 in that the decision to suspend Mr. Brown for 2 days was not reasonably related to his conduct nor his previous disciplinary history. The damage to Mr. Maki's ball hopper was unintentional and cosmetic. And none of Mr. Brown's venting occurred in or around Mr. Maki. SPR is making a mountain out of a mole hill by charging Mr. Brown with major misconduct that we doubt is consistent with similar other misconduct across the City of Seattle. We intend to request that SPR support this 2-day suspension with data that proves that Mr. Brown is being treated fairly and similarly to other similarly situated City employees.
4. SPR failed to consider mitigating circumstances when applying Personnel Rule 1.3.3.A. It is relevant that the damage to Mr. Maki's ball hopper was cosmetic. The cosmetic

damage to Mr. Maki's ball hopper shows that Mr. Brown lacked intent to damage the hopper when he allegedly made contact with it. In addition, SPR failed to consider that Mr. Brown approached Mr. Maki under the guise of a new Unauthorized Lesson policy which means that he was acting within the bounds of his scope of work

5. SPR and Mr. Bartolome repeatedly and improperly applied the "more likely than not" standard of review. Mr. Bartolome actually stated that DESPITE the absence of a statement from eyewitness Moreno, and despite Mr. Maki withholding his alleged video of the incident, that other available evidence supported that Mr. Brown more likely than not damaged Mr. Maki's ball hopper. And what was that other supporting evidence? It was simply Mr. Maki repeatedly making the same accusation over and over again. In this country, allegations are not proof. Mr. Brown has also consistently denied damaging Mr. Maki's hopper. Why do his assertions carry less weight than Mr. Maki's? In a "he-said he-said" scenario, it is difficult to conclude that one person's version of a story is more likely than the other's. Add in the corroborating statement from Ms. Hood and the failure of Mr. Maki and SPR to produce Ms. Moreno's witness statement or Mr. Maki's alleged video, and it becomes impossible to conclude that Mr. Maki's version of events is more credible than Mr. Brown's. As such, it is impossible to conclude that Mr. Brown more likely than not damaged Mr. Maki's ball hopper. Basically, the only evidence SPR has actually produced so far in this case was Mr. Brown's admission that he became frustrated while in the lobby and swore around Mr. Look. That's it. Essentially, the City's argument boils down to "because we say so". That is not fair and that is not objective.
6. SPR did not conduct a fair and objective investigation in contravention of Personnel Rule 1.3.2.D.3. Specifically, SPR, Mr. Williams and Mr. Bartolome moved the goalposts at each level to pivot after realizing that most of their initial allegations did not stick. In his Results of Investigation, Mr. Judd asserted multiple allegations to include: yelling at and swearing in front of Mr. Maki (behaved unprofessionally towards the participant), hitting the backdrop causing a loud bang, self-assigning himself to a class to antagonize Mr. Maki, and failing to report the unauthorized lesson violation to his supervisor to support conflict resolution, among others. In our Response to the Results of Investigation, we were able to rebut every single one of those allegations.

Next, in his Results of Laudermill Hearing, Mr. Williams makes pointed new assertions, ones that patently fly in the face of the Personnel Rules. Mr. Williams stated that "the nature of the damage being "cosmetic" is beside the point. It doesn't diminish the fact that you damaged the ball hopper by striking it with your tennis racket." However, Personnel Rule 1.3.3.A states that "the following is a nonexclusive list of disciplinary offenses where a verbal warning or written reprimand will not be appropriate *in the absence of mitigating circumstances*. The fact that the damage was cosmetic was not

“beside the point”. It was a mitigating factor which should have been considered and was not.

Additionally, Mr. Williams goes on to repeat that “I echo Mr. Judd’s sentiment that you are permitted to be frustrated, but cursing and yelling – albeit to yourself – is not professional. The customer heard it and your immediate supervisor attested to these factors.” This couldn’t be more wrong. One, SPR has provided zero proof that Mr. Maki heard Mr. Brown curse or yell. Two, nowhere in this investigation did SPR assert that Mr. Look attested to these factors. Why? Because Mr. Look wasn’t present during Mr. Brown’s interaction with Mr. Maki.

As discussed above, Mr. Williams then attempted to relitigate whether Mr. Brown self-assigned himself to a class when that point is apparently moot. Not only did he repeat a moot point, forcing us to respond, he got it completely wrong. There was no “clear evidence to support that you self-assigned yourself to a canceled class”. Mr. Austin’s witness statement makes this abundantly clear.

Next, after rebutting these allegations in our Response to the Results of Investigation as well as during our Step 3 grievance hearing with Mr. Bartolome, Mr. Bartolome eliminates any mention of the allegations of yelling or swearing in Mr. Maki’s presence, hitting the back curtain causing a loud bang, self-assigning himself to a class to antagonize Mr. Maki (moot), and failing to report the unauthorized lesson violation to his supervisor to support conflict resolution. Instead, the only argument Mr. Bartolome and SPR have left is that Mr. Maki’s word carries more weight than Mr. Brown’s, unintentional cosmetic damage is equivalent to intentional substantial damage, and that venting and swearing out of frustration at nobody in particular in the presence of his supervisor amounts to major misconduct and still warrants a 2-day suspension. That is not fair, that is not objective, and that is not just.

A fair and objective arbiter of facts would have acknowledged their losses and concluded that Mr. Brown was guilty of one thing and one thing alone – swearing in front of his supervisor. We would be stunned if SPR could produce data that supports the claim that 2-day suspensions have been levied against other City employees in similar situations. Mr. Brown’s conduct did not rise to the level of major misconduct. At most he should receive a warning. This is the sort of one-off behavior which should have warranted a coaching memo and guidance that, should this behavior repeat itself in the future, further progressive discipline would be warranted. Instead, despite having nearly every single one of their allegations rebutted, SPR, Mr. Williams and Mr. Bartolome continued to hold fast to the notion that Mr. Brown was guilty of major misconduct.

Considering what SPR originally accused Mr. Brown of compared to what they eventually stood on, any objective and unbiased investigator should have cut their losses and reduced the penalty accordingly. Both Mr. Williams and Mr. Bartolome failed in this respect. As such, we are asking this appeals commission to do what SPR has failed to do: consider the totality of the evidence and reduce Mr. Brown's 2-day suspension to a coaching memo or a warning.