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7 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
8 **OF THE STATE OF WASHINGTON**

9 IN RE COMPLIANCE WITH RCW
10 42.17/42.17A:

PDC CASE NO. 13-017

ORDER OF DISMISSAL

11 TROY KELLEY,

12 Respondent.
13

14 This matter came before the Washington State Public Disclosure Commission on
15 December 6, 2012 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington.
16 Those present included Amit Ranade, Commission Chair; Barry Sehlin, Vice Chair; Jim
17 Clements, Member; Grant Degginger, Member; and Kathy Turner, Member.

18 In attendance were Phil Stutzman, PDC Director of Compliance; Kurt Young, PDC
19 Compliance Officer; PDC Executive Director Andrea McNamara Doyle; Nancy Krier,
20 Commission General Counsel; and PDC staff member Jana Greer as recorder/reporter of the
21 proceedings. The Respondent, Troy Kelley, was not present; however, his campaign manager,
22 Matt Miller, was present. The proceeding was open to the public and recorded.

23 This case concerns allegations in a 45-day citizen action letter complaint filed on
24 September 26, 2012 by Kirby Wilbur, Chair of the Washington State Republican Party, that
25 since 2005 Respondent filed incomplete and inaccurate information on his Personal Financial
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1 | Affairs Statements (Form F-1) in violation of RCW 42.17.241/42.17A.710. The complaint
2 | was submitted to the Washington State Attorney General's Office and the King County
3 | Prosecutor's Office, and referred to the PDC for investigation and possible action.

4 | The Commission was provided with a Report of Investigation dated November 26,
5 | 2012 (and exhibits); and, an Executive Summary and PDC Staff Analysis. Mr. Young
6 | summarized the investigation. Mr. Stutzman described the PDC Staff recommendation that the
7 | Commission should dismiss the allegations in the complaint that had not been previously
8 | addressed ("remaining allegations") in a brief adjudicative proceeding (brief hearing). He
9 | described that the Commission should recommend that the Attorney General and King County
10 | Prosecuting Attorney take no further action with respect to the allegations in the complaint.
11 | Mr. Miller and Thatcher Collins, a member of the public, briefly addressed the Commission
12 | with respect to the staff recommendation.

13 | The Commission voted to dismiss the remaining allegations and to recommend no
14 | further action by the Attorney General and King County Prosecuting Attorney with respect to
15 | the allegations in the complaint.

16 | The Commission hereby enters the following Findings of Fact, Conclusions of Law,
17 | and Order.

18 | **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 | **Jurisdiction**

20 | 1. The Commission has jurisdiction to hear this matter as provided in RCW
21 | 42.17/42.17A.¹

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26 | ¹ Effective January 1, 2012, RCW 42.17 was recodified to RCW 42.17A.

1 **Findings of Fact**

2 *Respondent*

3 1. The Respondent is an incumbent State Representative from the 28th Legislative
4 District. He was elected to that office in 2006 and re-elected in 2008 and 2010.

5 2. The Respondent was a candidate for Washington State Auditor in 2012. He
6 filed a Candidate Registration (C-1 Report) on April 13, 2012.

7 3. Respondent was elected State Auditor in the November 6, 2012 general
8 election.

9 *Respondent's Personal Financial Affairs Disclosure Reports*

10 4. During his campaigns and while serving as an elected official, the Respondent
11 filed with the PDC Personal Financial Affairs Statements (F-1 report), F-1 Supplements, and
12 Minor Change or No Change Reports (Form F-1A) ("F-1 filings").

13 (a) Respondent filed an F-1 report and F-1 Supplements, covering December 2004 -
14 December 2005.

15 (b) Respondent filed three F-1A reports in 2006, 2007, and 2008, covering calendar
16 years 2005 - 2007.

17 (c) In 2009, Respondent filed another full F-1 report for calendar year 2008.

18 (d) Respondent filed F-1A reports for calendar years 2009, 2010, and 2011.

19 (e) On November 8, 2012, Respondent filed an F-1 Supplement for calendar year
20 2008 and amended F-1A reports covering calendar years 2008 and 2010.

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1 *Citizen Action Complaint, Investigation, and Brief Hearing on Certain Allegations*

2 5. The complaint made five allegations concerning violations of RCW
3 42.71/42.17A by Respondent with respect to his F-1 filings. The complaint asked additional
4 questions.²

5 6. **First Allegation and Second Allegation (in part): Failure to file an F-1**
6 **Supplement for 2008 and to disclose trade names for United National, LLC (United**
7 **National); and, failure to accurately disclose income from United National for 2009 -**
8 **2011.** The first allegation in the complaint alleged that Respondent failed to file an F-1
9 Supplement for United National, LLC (United National) for calendar year 2008 disclosing: (i)
10 his ownership interest; (ii) the multiple trade names registered and in active use; and (iii) a
11 description of the business involvement in the insurance industry. The second allegation
12 alleged in part that the Respondent reported income for 2009 – 2011 from United National
13 even though the company was dissolved in 2008, and that he did not report the actual sources
14 of income for those years.

15 (a) On November 26, 2012, PDC Staff issued a Notice of Administrative Charges,³
16 addressing the first and part of the second allegations in the complaint concerning United
17 National for calendar years 2008 - 2011. A brief adjudicative proceeding (brief hearing) was
18 conducted on those charges on December 6, 2012.

19 (b) In the brief hearing, the presiding officer found that the Respondent violated
20 RCW 42.17.241 by failing to timely file an F-1 Supplement to his F-1 report for United
21

22 ² The complainant's questions were addressed by PDC Staff under "Additional questions" on page 5 of
23 the Executive Summary and Staff Analysis. The questions concerned Respondent's alleged ownership interest in
24 MGM Property Management, information concerning Property Close Insurance Services, and the status of United
25 National. While the complainant did not present the questions as specific allegations, the PDC investigation
26 showed no evidence of violations of RCW 42.71/42.17A with respect to those statements; therefore, they are also
dismissed in this Order and the Commission does not recommend further action by the Attorney General or
Prosecutor.

³ The charges were also issued under PDC Case No. 13-017. A separate Order is being issued as a result
of the brief hearing.

1 National for calendar year 2008, and for failing to file an accurate F-1A for calendar year 2009
2 with respect to information concerning United National.⁴ Respondent was assessed a penalty.
3 See separately issued Findings of Fact, Conclusions of Law and Order Imposing Fine, PDC
4 No. 13-017.

5 *Remaining Allegations*

6 **7. Second Allegation (remaining part): Failure to accurately disclose income**
7 **from United National for 2007.** The second allegation also alleged that Respondent failed to
8 disclose income earned from United National for 2007 in Part 1 of the F-1 report.

9 (a) Respondent stated that he believed he had reported all income earned from
10 United National in 2007 and that the income he disclosed included all forms of compensation
11 and benefits.

12 (b) No evidence was found that Respondent underreported income earned from
13 United National in 2007.

14 **8. Third Allegation: Failure to accurately disclose income from Attorney**
15 **Trust Services (ATS).** The complaint alleged that Respondent failed to disclose income
16 earned from Attorney Trust Services (ATS) in 2011. The complaint alleged that Respondent
17 dissolved ATS in December of 2010, and the complainant questioned the actual source of
18 income attributed to ATS.

19 (a) Respondent stated that ATS was dissolved in December 2010, and that the
20 income amount, Code "B," as last reported in 2008, was the same for the F-1A reports he filed
21 for calendar years 2009 and 2010. He stated that he "received no reportable income" from
22 ATS during 2011.

23 ⁴ The presiding officer found that Respondent violated RCW 42.17.241 by failing to file an F-1
24 Supplement to his F-1 report for United National for calendar year 2008, and for failing to file an accurate F-1A
25 for calendar year 2009, disclosing: (1) his ownership interest in United National (2008 F-1 Supplement); (2)
26 United National's trade names registered and in active use (2008 F-1 Supplement); (3) a description of United
National's business involvement (2008 F-1 Supplement); and (4) that United National was dissolved in 2008 and
that Respondent earned no income from United National during 2009 (2009 F-1A).

1 (b) On November 8, 2012, Respondent filed an amended F-1A report for calendar
2 year 2010 (Finding of Fact 4(e)), disclosing that ATS closed in December of 2010.
3 Respondent also reported that he earned no income from ATS in 2011, and that the asset value
4 for 2011 was zero.

5 9. **Fourth Allegation: Failure to disclose business customer information on F-**
6 **1 Supplement regarding Blackstone International (Blackstone).** The complaint alleged that
7 Respondent failed to disclose United National as a business customer making payments over
8 \$7,500 to Blackstone International (Blackstone) on the F-1 Supplement filed for Blackstone for
9 2008.

10 (a) Respondent stated that United National did not make payments as a business
11 customer to Blackstone, but rather made transfers in the form of shareholder distributions. He
12 stated that United National transferred funds to Blackstone between 2005 and 2008 as earnings
13 between a parent company (Blackstone) and a subsidiary of Blackstone (United National).

14 (b) Respondent stated that the transfers of funds from United National to
15 Blackstone were shareholder distributions made in accordance with Internal Revenue Service
16 (IRS) regulations.

17 10. **Fifth Allegation: Failure to disclose business customer and accurate**
18 **ownership interest on F-1 Supplement regarding Berkeley United, LLC (Berkeley**
19 **United).** The complaint alleged that Respondent failed to disclose Blackstone International as
20 a business customer making payments over \$7,500 to Berkeley United, LLC (Berkeley United)
21 on the F-1 Supplement filed for Berkeley United for 2008. The complaint alleged that
22 Respondent reported a 100 percent ownership interest in Berkeley United on the F-1
23 Supplement for 2008, but testified under oath that Wellington Trust owned one percent of
24 Berkeley United.

25 (a) Respondent stated that Berkeley United was owned by Wellington Trust and
26 Blackstone, and that it was incorporated in May 2008. Respondent stated that the companies

1 he owns and controls did not make payments to each other as business customers, but rather
2 made transfers to each other as distributions of shareholder earnings.

3 (b) Respondent filed the last complete F-1 report on April 10, 2009, disclosing that
4 he owned 100 percent of Berkeley United. He stated that the "ownership percentages" were
5 correctly reported.

6 11. PDC Staff recommended that the Commission take appropriate enforcement
7 action in response to the F-1 reporting violations of RCW 42.17.241, noting that a brief hearing
8 had been held on those allegations and a penalty assessed.

9 12. PDC Staff recommended that the Commission dismiss the remaining allegations
10 in the complaint that had not been previously addressed in the brief hearing, based upon the
11 Report of Investigation and the review of relevant laws.

12 13. PDC Staff recommended that the Commission recommend that the Attorney
13 General and the Prosecutor take no further action regarding the allegations in the complaint.

14 **Conclusions of Law**

15 1. RCW 42.17.240/42.17A.700 requires candidates and elected officials to file a
16 Personal Financial Affairs Statement (Form F-1).

17 2. RCW 42.17.241/42.17A.710 specifies the contents of the F-1 report, including
18 requiring disclosure of:

- 19
- 20 • Occupation, employer, and business address;
 - 21 • The name and address of each governmental entity, corporation, partnership,
22 joint venture, sole proprietorship, association, union, or other business or
23 commercial entity from whom compensation has been received in any form of
24 a total value of two thousand dollars or more; the value of the compensation;
25 and the consideration given or performed in exchange for the compensation;
 - 26 • The name of any corporation, partnership, joint venture, association, union, or
other entity in which is held any office, directorship, or any general
partnership interest, or an ownership interest of ten percent or more; the name
or title of that office, directorship, or partnership; the nature of ownership
interest; and: (i) With respect to a governmental unit in which the official
seeks or holds any office or position, if the entity has received compensation

1 in any form during the preceding twelve months from the governmental unit,
2 the value of the compensation and the consideration given or performed in
3 exchange for the compensation; and (ii) the name of each governmental unit,
4 corporation, partnership, joint venture, sole proprietorship, association, union,
5 or other business or commercial entity from which the entity has received
6 compensation in any form in the amount of *ten thousand dollars or more
7 during the preceding twelve months and the consideration given or performed
8 in exchange for the compensation.

9 3. WAC 390-24-010 is the Form F-1 and F-1 Supplement.

10 4. WAC 390-24-090 permits filers to use the F-1A "short form" to update a
11 previously-filed full F-1 report when there is no change or only minor change from an earlier
12 F-1 report. No more than three F-1A forms may be used before another full F-1 must be filed.

13 5. The Commission finds and concludes that the action in the brief hearing
14 concerning several of the allegations in the citizen action letter complaint as described in this
15 Order is the appropriate enforcement of the Respondent's violations of RCW 42.17/42.17A
16 with respect to those claims.

17 6. Based upon the record herein, the Commission also finds and concludes that the
18 Respondent did not violate RCW 42.17/42.17A as alleged in the remaining allegations in the
19 complaint and therefore those allegations should be dismissed.

20 II. ORDER OF DISMISSAL

21 By unanimous vote, the Commission dismisses the remaining allegations against the
22 Respondent in the complaint.

23 The Executive Director is authorized to enter this order on behalf of the Commission.

24 So ORDERED this 21st day of December, 2012.

25 WASHINGTON STATE PUBLIC
26 DISCLOSURE COMMISSION

FOR THE COMMISSION:

Andrea M. Doyle
Andrea McNamara Doyle
Executive Director

1 *Attachment: Appeals and Enforcement of Final Orders*

2 *Copy of this Order of Dismissal to:*

3 Troy Kelley
4 2521 Freemont Street
5 Tacoma, WA 98406

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7 I, Jana Greer, certify that I mailed a copy of this order to the
8 Respondent at the respective address above, postage prepaid, on the date stated herein.

9 Jana Greer
Signature

12/21/12
Date

INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

APPEALS

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.