

Executive Summary and Staff Analysis
Troy Kelley
PDC Case No. 13-017

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 13-017, a 45-day citizen action letter (Citizen Action Complaint) filed on September 26, 2012 by Kirby Wilbur, Chair of the Washington State Republican Party against Troy Kelley, an incumbent State Representative from the 28th Legislative District and a candidate for State Auditor in 2012. The Citizen Action Complaint was filed with the Washington Attorney General's Office and the Pierce County Prosecuting Attorney's Office, and referred to the PDC for investigation and possible action.

Allegations

The Citizen Action Letter alleged that Troy Kelley violated RCW 42.17A.710¹ as follows:

- A. **Failed to file an F-1 Supplement for 2008 and to disclose trade names for United National, LLC.** The complaint alleged that Mr. Kelley failed to file an F-1 Supplement for United National, LLC (United National) for calendar year 2008 disclosing: (a) His ownership interest; (b) The multiple trade names registered and in active use; and (c) A description of the business involvement in the insurance industry.
- B. **Failed to accurately disclose income (United National).** The complaint alleged that Mr. Kelley failed to disclose income earned from United National for 2007 in Part 1 of the F-1 report, and that he reported income for 2009, 2010, and 2011 from United National even though the company was dissolved in August 2008. The complaint also alleged that Mr. Kelley did not report the actual sources of the income earned in 2009, 2010, and 2011.
- C. **Failed to accurately disclose income (Attorney Trust Services).** The complaint alleged that Mr. Kelley failed to disclose income earned from Attorney Trust Services (ATS) in 2011. The complaint alleged that Mr. Kelley dissolved ATS in December of 2010, and questioned the actual source of income attributed to ATS.
- D. **Failed to disclose business customer on F-1 Supplement (Blackstone International).** The complaint alleged that Mr. Kelley failed to disclose United National as a business customer making payments over \$7,500 to Blackstone International on the F-1 Supplement filed for Blackstone International for 2008.
- E. **Failed to disclose business customer and accurate ownership interest on F-1 Supplement (Berkeley United).** The complaint alleged that Mr. Kelley failed to disclose Blackstone International as a business customer making payments over

¹ Effective January 1, 2012, RCW 42.17.241 was re-codified as RCW 42.17A.710

\$7,500 to Berkeley United, LLC on the F-1 Supplement filed for Berkeley United, LLC for 2008. The complaint alleged that Mr. Kelley reported a 100 percent ownership interest in Berkeley United, LLC on the F-1 Supplement for 2008, but testified under oath that Wellington Trust owned one percent of Berkeley United, LLC.

F. **Additional questions.** The complaint asked additional questions about whether Mr. Kelley failed to disclose income and ownership interests for United National 14, LLC, MGM Property Management, and Property Close Insurance Services.

Applicable Statutes and Rule

RCW 42.17.240 requires all elected and appointed officials to file a Personal Financial Affairs Statement (F-1 report) and to disclose financial information for the reporting individual and each member of his or her immediate family.

RCW 42.17.241 specifies the content of the F-1 reports, including, among other things, each occupation, employer, and business address; entities that paid two thousand dollars or more in compensation, and the value of the compensation; names of the entities in which the filer holds specified interests, and the identity of certain types of customers, including business customers paying ten thousand dollars or more to the entity during the previous year.

(1)

WAC 390-24-010 is the form for the Statement of Financial Affairs (form F-1 and F-1 Supplement). These forms describe the information that must be disclosed for each entity, including, on the F-1 Supplement, the trade or operating name.

Investigative Findings

Troy Kelley has been a State Representative from the 28th Legislative District since being elected to that office in 2006.

On April 13, 2012, Mr. Kelley filed a Candidate Registration (C-1 report) declaring his candidacy for Washington State Auditor in 2012. On November 6, 2012, Mr. Kelley was elected Washington State Auditor.

After submitting an F-1 report in 2005, Mr. Kelley filed three F-1A Minor Change or No Change reports in 2006, 2007, and 2008, covering calendar years 2005 - 2007. In

2009, Mr. Kelley filed another full F-1 report for calendar year 2008, and then filed F-1A Minor Change or No Change reports for calendar years 2009, 2010, and 2011.²

Alleged Failure to file an F-1 Supplement for 2008 and to disclose trade names for United National

- Mr. Kelley dissolved United National, LLC in June of 2008.
- On November 8, 2012, Mr. Kelley filed an F-1 Supplement for United National for calendar year 2008, disclosing a 79.9 percent ownership interest and seven reportable business customers that had paid United National, LLC more than \$7,500 during the first six months of 2008 for “document preparation” services.
- The F-1 Supplement filed on November 8, 2012 disclosed that: (1) the legal name of United National was United National, LLC; (2) the trade or operating name of the business was Post Closing Department; (3) the entity was dissolved at the end of June 2008; and (4) the entity earned no income in 2009 and had no assets to disclose for 2009.
- Mr. Kelley disclosed the information about United National, LLC more than three years (1,301 days) after the April 15, 2009 due date.
- Mr. Kelley provided a list of ten inactive trade names registered with the Washington State Department of Licensing. He stated that he did not disclose these inactive trade names on the F-1 Supplement for United National, LLC because the F-1 Supplement instructions ask the filer to report the trade or operating names that are used for business purposes.

Alleged failure to accurately disclose income (United National)

- Mr. Kelley stated that he believed he had reported all income earned from United National, LLC in 2007 and that the income he disclosed included all forms of compensation and benefits. No evidence was found that Mr. Kelley underreported income earned from United National in 2007.
- However, by continuing to file F-1A Minor or No Change reports even after United National was dissolved in 2008, without noting the dissolution, Mr. Kelley overstated his income for 2009, 2010, and 2011.

² Under WAC 390-24-090, filers may use the F-1A “short form” to update a previously filed full F-1 report when there is no change or only minor change from the earlier report. Not more than three F-1A forms may be used before another full F-1 must be filed.

- On November 8, 2012, Mr. Kelley filed an amended F-1A covering calendar year 2008 disclosing that United National, LLC was closed in June 2008, that the income earned in 2008 was code “E,” that the asset value for 2008 was code “E,” and that no income was earned from United National in 2009, 2010, or 2011.

Alleged failure to accurately disclose income (Attorney Trust Service)

- Mr. Kelley stated that Attorney Trust Services (ATS) was dissolved in December 2010, and that the income amount, Code “B,” as last reported in 2008, was the same for the F-1A reports he filed for calendar years 2009 and 2010. He stated that he “received no reportable income” from Attorney Trust Services, Inc. during 2011.
- On November 8, 2012, Mr. Kelley filed an amended F-1A report for calendar year 2010, disclosing that Attorney Trust Services, Inc. closed in December of 2010. Mr. Kelley also reported that he earned no income from ATS in 2011, and that the asset value for 2011 was zero.

Alleged failure to disclose business customer on F-1 Supplement (Blackstone International)

- Mr. Kelley stated that United National, LLC did not make payments as a business customer to Blackstone International, but rather made transfers in the form of shareholder distributions. He stated that United National, LLC transferred funds to Blackstone International between 2005 and 2008 as earnings between a parent company (Blackstone) and a subsidiary of Blackstone (United National, LLC).
- According to Mr. Kelley, the transfers of funds from United National, LLC to Blackstone International were shareholder distributions made in accordance with Internal Revenue Service (IRS) regulations.

Alleged failure to disclose business customer and accurate ownership interest on F-1 Supplement (Berkeley United)

- Mr. Kelley stated that Berkeley United, LLC was owned by Wellington Trust and Blackstone International, and that it was incorporated in May 2008. Mr. Kelley stated that the companies he owns and controls did not make payments to each other as business customers, but rather made transfers to each other as distributions of shareholder earnings.

- Mr. Kelley filed the last complete F-1 report on April 10, 2009, disclosing that he owned 100 percent of Berkeley United, LLC. He stated that the “ownership percentages” were correctly reported.

Additional questions

- **MGM Property Management:** Mr. Kelley stated that he had no ownership interest in MGM Property Management, and that he had nothing to disclose on his F-1 reports for that entity because he received no income from MGM Property Management during the last five years.
- **Property Close Insurance Services:** Mr. Kelley stated that Property Close Insurance Services was one of the trade names registered for United National, LLC, but was not used for any business purpose. He stated that Property Close Insurance Services “*did not hold itself out to the public for business during the reporting periods*” and that all reportable information was reported under United National, LLC, on the F-1 Supplement.
- **United National 14, LLC:** Mr. Kelley stated that United National 14, LLC was dissolved in 2008, around the same time as United National, LLC was dissolved. He stated “*the company was closed in June of 2008 and formally dissolved on or before August of 2008.*” On November 8, 2012, Mr. Kelley filed an F-1 Supplement for United National 14, LLC, for calendar year 2008, disclosing United National 14, LLC, was dissolved in 2008.

Enforcement Action for Failing to File an F-1 Supplement and for Failing to File an Accurate F-1A

On November 26, 2012, PDC staff issued a Notice of Administrative Charges to Mr. Kelley for a Brief Enforcement Hearing to be held on the morning of December 6, 2012, preceding the full Commission meeting. At the Brief Enforcement Hearing, staff is alleging that Mr. Kelley violated RCW 42.17.241 by failing to file an F-1 Supplement to his F-1 report for United National, LLC for calendar year 2008, and for failing to file an accurate F-1A for calendar year 2009, disclosing: (1) his ownership interest in United National (2008 F-1 Supplement); (2) 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 Mr. Kelley earned no income from United National during 2009 (2009 F-1A).

Conclusion

The evidence shows that Troy Kelley violated RCW 42.17.241 by failing to file an F-1 Supplement for United National, LLC for calendar year 2008, and by failing to file an accurate F-1A for calendar year 2009 disclosing: (1) his ownership interest in United National (2008 F-1 Supplement); (2) 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 Mr. Kelley earned no income from United National during 2009 (2009 F-1A).

There is no evidence that Troy Kelley violated RCW 42.17.241 by: (1) not reporting inactive trade names on the F-1 Supplement for United National, LLC; (2) not accurately disclosing income earned from United National for 2007; (3) not disclosing income earned from Attorney Trust Services; (4) not disclosing United National as a reportable business customer of Blackstone International; (5) not disclosing Blackstone International as a reportable business customer of Berkeley United, LLC; (6) not accurately reporting his ownership interest in Berkeley United, LLC for 2008; (7) failing to disclose income and ownership interests for United National 14, LLC, MGM Property Management, and Property Close Insurance Services.

Recommendation

PDC staff recommends that the Commission:

- 1) Take appropriate enforcement action against Troy Kelley in response to the F-1 reporting violations of RCW 42.17.241;
- 2) Dismiss the allegations regarding F-1 reporting for which there was no evidence of violations of RCW 42.17.241; and
- 3) Recommend to the Attorney General and Prosecuting Attorney that no further action be taken.