

maintained summaries of the records. On June 1, 2007, Assistant Attorney General Veronica Dersch responded refusing cooperation. *See also* Exhibit S5.

EXCEPTIONS TO FINDING TEN⁴¹

231. Mr. Kline concurs with the Panel's conclusion that retaining the summaries did not violate the KRPC. Panel Report, at ¶374.

EXCEPTIONS TO FINDING ELEVEN⁴²

Mr. Kline did not deceptively answer questions about the WHCS summaries. The questions were asked in three separate proceedings spanning more than one year and related to a three-year period of time. Once he knew, Mr. Kline consistently revealed that his office maintained such summaries.

232. The Panel finds that Mr. Kline knowingly provided false material evidence, KRPC 3.3(a), and engaged in dishonest and deceitful misrepresentation. KRPC 8.4(c). *See* Panel Report, ¶¶379-380.

233. On November 20, 2007, during the sealed hearing in *CHPP v. Kline*, counsel for Planned Parenthood questioned Mr. Kline:

Q. [by Mr. Irigonegaray] Are there any summaries of Doctor Tiller's records left in Johnson County?

⁴¹ *See* Panel Report, at ¶¶ 371-374 (whether Respondent violated the KRPC “when he failed to return the summaries of the redacted WHCS patient medical records”).

⁴² *See* Panel Report, at ¶¶ 375-380 (whether Respondent violated the KRPC “when he testified before Judge King that he had three summaries of redacted WHCS patient medical records when he actually had 62 summaries of redacted WHCS patient medical records and when he stated to the Kansas Supreme Court that he did not have any summaries of redacted WHCS patient medical records”).

A. I have a summary of three records that pertain to a theory of criminal liability that would, have jurisdiction in Johnson County against Doctor Tiller. I have . . . request[ed] copies of the actual records relating to those three abortions. The Attorney General has refused to provide those records.

Q. What is the-- the nature of those summaries that you have regarding Doctor Tiller's records ?

THE WITNESS: Your Honor, we're getting into an area of executive privilege in which I'm engaged in a criminal investigation that involves this counsel's clients, as well as Doctor Tiller.

Exhibit 84, at 1231-1232.⁴³

234. Mr. Kline answered by referencing the three summaries in his possession relating to the investigation of a possible conspiracy between Planned Parenthood and WHCS to commit criminal late-term abortion. After explaining why he had these summaries, Mr. Kline invoked executive privilege and refused to answer further questions about the summaries. *Id.*

235. After an in camera hearing, Judge King sustained Mr. Kline's claim of executive privilege. He prohibited any further questions about the summaries. King 1632:22-1634:13. The Panel Report omits Judge King's testimony.

236. Mr. Kline was not asked how many summaries were in his possession. Asked if he had any summaries, he correctly answered that he did, referenced the three relevant to his investigation, and then successfully invoked executive privilege.

237. During the hearing, Mr. Kline explained his testimony:

⁴³ Although WHCS was not a party to *CHPP v. Kline*, this Court instructed Judge King to make findings of fact about the handling of redacted WHCS records.

Q. [By Mr. Hazlett] Well, given this testimony that I just read to you, at that time, in November or December of 2007, you had 62 summaries, did you not?

A. Yes.

Q. And could you explain then why the answer here about having only three records?

A. There's two potential explanations. One is that I was aware of the – all the summaries and I asked for executive privilege because I'm mainly concerned about the three records that I've mentioned and he grants it. The other is I forgot, and as I sit here today – because on my mind was the three. That's what I wanted that was on my mind. That's what all of that was about. I don't know if I misspoke because I didn't remember or I don't know if I was using those three to get executive privilege and later told them. I honestly can't answer it today. I don't recall. But I mentioned I have summaries and I focused in on three and that's always what was on my mind generally, those three records.

Kline 565:16-566:13.

238. **Dr. Tiller was not a party to *CHPP v. Kline*.** Mr. Morrison, as an intervenor, sought to force Mr. Kline to give up all his evidence against Planned Parenthood. This Court, however, denied Mr. Morrison's petition, allowing the redacted copies to stay in Johnson County.

239. Six months later, on June 12, 2008, during oral argument in *CHPP v. Kline*, Justice Beier asked Mr. Kline if he still retained summaries of the WHCS files. He answered: "I don't believe that I do." Exhibit 85, at 1511-12. Justice Beier prefaced her question with another question: whether Mr. Kline had informed Judge Anderson of his possession of the summaries. *Id.* Mr. Kline informed the Court that he was not familiar with what the Court was referencing

and that he has not seen the record for several months. *Id.* Mr. Kline did not have the benefit of the record before him at oral argument and was represented by counsel.⁴⁴

240. After Mr. Morrison refused to allow access to the WHCS records, Mr. Kline put the matter out of his mind. Investigation of late-term abortion referrals between Planned Parenthood and WHCS was futile without access to the WHCS records. Kline 538:1-540:25.

241. However, in late 2008, his staff informed him in response to a subpoena relating to *State v. Tiller* that his office possessed the WHCS summaries. He then ordered them produced to Judge Owens. Kline 566:14-567:9, 569:1-14.

242. Mr. Kline called Judge Anderson and informed him that the summaries were in Johnson County. Judge Anderson stated that he did not have to supply the summaries to the Court. Judge Anderson later informed Mr. Hazlett of the communication, adding that he declined to order delivery of the summaries to the Court.

On November 10, 2008 I returned a phone call to Phill Kline. Phill Kline told me that he had discovered that he had some summaries of Dr. Tiller's medical records in his possession. He asked if I had ordered the summaries be returned to me during the April 2007 hearing. I told him I did not remember what he had said when he delivered records I told him he was not required to return any summaries to me"

Exhibit 136.

243. Mr. Kline notified the court that his office possessed summaries of the WHCS records, documents which Judge Anderson ruled Mr. Kline may possess. The communication

⁴⁴ Planned Parenthood filed the *CHPP v. Kline* mandamus action. Management of the WHCS files is not material to an action in which WHCS is not a party and the relief sought does not encompass WHCS.

with Judge Anderson demonstrates that they both forgot details of a matter that spanned a number years. Mr. Kline's disclosure of his possession of the summaries belies an intent to deceive. Mr. Kline also takes exception to the Panel's assumption that his possession of the summaries is "material."

244. On April 11, 2007 Mr. Kline informed Judge Anderson that his Office retained "summaries" and "work product." In the November, 2007 hearing in *CHPP v. Kline*, Mr. Kline truthfully informed the Court that his office possessed WHCS summaries, and successfully invoked executive privilege. In June, 2008, unaware beforehand that he would be questioned at oral argument, he indicated that he "didn't think" his office still possessed summaries of the WHCS records. When he learned in December, 2008, that his office still had WHCS summaries, he produced them in response to a subpoena, and also informed Judge Anderson, who did not request their delivery to the Court.

245. This Court in *CHPP v. Kline*, rejecting the arguments of Attorney General Morrison and Planned Parenthood, stated "In sum, the person who holds the position of Johnson County District Attorney may lawfully possess the results of a criminal investigation begun by the Attorney General." 287 Kan. at 415.

246. Mr. Kline takes exception to the Panel's finding that he intentionally provided material false testimony. Mr. Kline's office had the legal right to possess the summaries. He repeatedly revealed that his office had them. On one occasion, without benefit of the record, he stated his opinion that he did not believe his office still maintained the summaries. Later,

after learning they were still in the possession of his office, he notified Judge Anderson and produced them. Mr. Kline takes exception to the Panel’s conclusion that clear and convincing evidence demonstrates he intended to provide false testimony in violation of KRCP 3.3 and 8.4. See Panel Opinion, ¶¶375-380. The Panel’s related conclusion that Mr. Kline “apparently” did not violate the KRPC by his “failure” to return the WHCS summaries undermines the Panel’s finding that he spoke deceptively about them. See Panel Report, ¶¶371-374. First, Mr. Kline was not ordered to return summaries and, therefore, could not have “failed” to return them. Second, when Mr. Kline informed Judge Anderson of his possession of the summaries, and he did not require their delivery to the court. This previous finding by the Panel undermines any claim that Mr. Kline’s statements regarding the summaries were material.

EXCEPTIONS TO FINDING TWELVE⁴⁵

Mr. Kline fully cooperated with Mr. Hazlett’s investigation.

247. The Panel Report finds that Mr. Kline provided “false” evidence in response to the Complaint, focusing on two statements in a twenty-page letter. Panel Report, ¶¶ 381-387. The Panel claims Mr. Kline’s statements that he did not have direct access to the redacted records, while serving as Attorney General, and that the records were kept under lock and key, are false. The Panel concludes that Mr. Kline made a “false statement of material fact” or failed “to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.” KRPC 8.1(a). Mr. Kline takes exception to ¶¶ 381-387.

⁴⁵ See Panel Report, at ¶¶ 381-387 (whether Respondent violated the KRPC “when he provided false information in his response to the complaint”).