

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").

248. Mr. Hazlett initiated his investigation of Mr. Kline in November, 2006. Shortly thereafter, he retained the services of Topeka attorneys Lucky DeFries and Mary Beth Mudrick. See Exhibit 142 (DeFries Report).

249. Mr. DeFries and Ms. Mudrick reviewed hundreds of pages of documents and interviewed numerous witnesses. On May 22, 2008, they issued a report **concluding that probable cause does not exist that Mr. Kline violated the KRPC.** *Id.*

250. Mr. DeFries and Ms. Mudrick testified at the hearing that Mr. Kline fully cooperated with their investigation. Mudrick 1420:2-3. Mr. DeFries stated:

Q. [By Mr. Stafford] Throughout this time you had occasional contact with Mr. Kline?

A. We did.

Q. And in your contact with Mr. Kline did he show himself to be cooperative with you?

A. Absolutely.

Q. Did he seem forthright in his responses to you?

A. To the best of my knowledge. He, you know, made sure we had access. He provided me his cell phone number and indicated that it might be easier to get him on that number than others. And so to the best of my recollection he – he was always making himself available and very cooperative.

DeFries 1776:11-22. See also Panel Opinion, ¶ 425.

251. Mr. Hazlett received the DeFries Report in May, 2008, a few weeks before Mr. Kline's primary election to continue his term as Johnson County District Attorney. The ethics

complaints against Mr. Kline were an issue in the election. Mr. Hazlett never informed Mr. Kline of the existence of the report.⁴⁶

252. The DeFries Report, covering the same time period as Mr. Hazlett's Complaint, (with the exception of Count II) reviewed allegations of violations of KRCP 3.3, 3.4, 3.6, 3.8, 8.2, and 8.4. Exhibit 142, at 10-13.

253. The DeFries Report concludes:

After reviewing the substantial documentation in this case, it is the opinion of these investigators that there is not probable cause to prove that Phill Kline violated any of the rules of ethics. In arriving at this opinion, investigators give particular weight to the findings made by Judge Anderson, including his finding that Attorney General Phill Kline stands "on firm legal ground in advancing his theory that the clinics have failed to comply with K.S.A. 65-6703(b)(2)." In addition, the Court found that Phill Kline did not violate the court's nondisclosure rule and refused to hold Mr. Kline in contempt of court [when requested by the clinics].

Exhibit 142, at 13. The Panel Report not only omits this finding, but does not mention any other of the factual findings of the DeFries Report anywhere in its 185-page opinion.

254. The Panel finds that Mr. Kline knowingly made a false statement of material fact about the location of working copies of the redacted medical records in a twenty-page letter to Mr. Hazlett. Panel Report, ¶1387.

255. The Panel quotes from a section of the letter that reads: "During my tenure as District Attorney the records were kept either in a closet in my locked office or a locked filing

⁴⁶ Counsel for Eric Rucker brought the DeFries Report to Mr. Kline's attention in early 2010, after discovering it in thousands of pages of documents produced by Mr. Hazlett.

cabinet in the work area of my Administrative Assistant” Panel Report, ¶1381. See Exhibit 5, at 122.

256. The Panel Report, however, omits an earlier portion of the letter **under a date heading of “May — present 2007”** that states “the Planned Parenthood files are maintained under lock and key in my office and are managed by my Administrative Assistant” Exhibit 5, at 119.

257. The two statements taken together represent an ambiguity. Mr. Kline testified:

At one point I say from May of 2007 to the present the documents were locked in my office. At another point I say the documents have always been under lock and key. . . . That is an ambiguity. It’s not an intentional deception. Mr. Hazlett never queried me about it. He never asked me what it meant.

Kline 3205:6-20. Mr. Kline letter of September 19, 2007, with exhibits, was sixty-nine pages.

Exhibit 5. Mr. Hazlett never sought clarification of the letter, or asked about the ambiguity.

258. Judge King found that Mr. Kline was not aware that Mr. William’s instructed Mr. Reed to keep the redacted copies at his apartment for lack of a secure location at the District Attorney’s office. Exhibit 90, at ¶¶ 145-146.

259. The Panel Report omits Mr. William’s testimony that he never informed Mr. Kline the records were for a time at Mr. Reed’s apartment.

Q. [By Mr. Hazlett] From January 8th, when you made the decision to give the records to Jared and tell him to take them to his residence until the records – you made the decision to have Jared bring the records back in, did you ever tell Mr. Kline, Mr. Rucker, Mr. Maxwell, or anyone else in the office that the records were at Jared Reed’s?

A. No, I didn’t want anyone else to know where they were.

Q. Not even Mr. Kline, Mr. Rucker, or –

A. I think we had a lot of things on our plate. And I didn't communicate that to them.

Williams 840:2-14.

260. The Panel found that the handling of the records did not constitute a violation of the KRPC. Panel Report, ¶¶ 355-358. This Court in *CHPP v. Kline* found that the Johnson County District Attorney had the right to possess the records. Judge King found that no one had unauthorized access to the records and that they were not disturbed in Jared Reed's apartment. See Exhibit 90, at ¶¶ 135-137, 140, 143-144.

261. Mr. Reed kept his apartment locked and saw no evidence of unauthorized access or tampering. *Id.* This testimony demonstrates the ambiguity was not "material," and that Mr. Kline's statements were not knowingly false.

262. The King Report, available to Mr. Hazlett in June, 2008, fully developed the facts about handling the records. Mr. Kline disputes that the evidence clear and convincingly demonstrates that he lied about a material fact or failed to correct a known misapprehension.

263. The Panel also finds that Mr. Kline's statement that he did not have direct access to the records while Attorney General is knowingly false. Panel Report, ¶ 383. The Panel relies on evidence that shows the records were left for one night in Mr. Kline's office while he was Attorney General. *Id.*

264. The Panel finds that Mr. Kline's "direct access" to the records while Attorney General is a material fact. Panel Report, ¶1387. The Panel does not allege, however, that access to the records by Mr. Kline was prohibited.

265. In fact, Mr. Kline did not have direct access to the redacted records while Attorney General. The Panel omits the testimony of Tom Williams that, while using Mr. Kline's office, he left the records overnight on one occasion. *See Williams 841:19-842:12, 846:17-848:14.*

266. Mr. Williams testified:

Q. [By Mr. Hazlett] At the Attorney General's Office . . . where were they [the records] kept then?

A. Initially when I was working with them I kept them in my office. I had an office on the third floor and I had a key, my secretary had a key. And I think I had some of them in a file cabinet. I had them there maybe for a week while we were doing the copying that had been ordered by Judge Anderson. And then we moved them into an evidence room that my secretary and Mr. Reed had sole control of.

Q. Only those two keys?

A. Well, the locksmith at the Department of Administration put a special lock on that door at my request, so, I mean, they had a key. But it was my understanding that **no one else in the Attorney General's Office had a key to that, except there were two keys, Mr. Reed and my secretary, Lorna Jansen.**

Williams 841:17-842:10 (emphasis added).

267. The Panel Report also omits the following factual findings by Judge King:

34. Attorney General Kline assigned the responsibility for the custody and control of the redacted patient medical records to Maxwell and Williams.

35. Williams received instructions regarding the proper handling of the records from Kline, Maxwell and Rucker. He was instructed that the investigation was a sensitive matter; that he needed to maintain control of the patient records at all times; and that he should not let others not involved in the investigation see the records.

36. After the records were copied, the copies were moved to a secure evidence room at the Attorney General's office. **Lorna Jansen and Jared Reed were co-custodians of the evidence room. They were the only person [sic] who had access to the evidence room,** other than a member of the Attorney General's IT staff and the State Locksmith.

....

42. With one exception, each time records were taken out of the secure evidence room for use by those involved in the investigation, all the records were returned to the evidence room or Williams' locked office. The one exception occurred on November 5, 2006, when some involved in the investigation met in Attorney General Kline's private office. At the conclusion of the meeting the records were inadvertently left in Kline's locked office overnight. Williams retrieved the records the next morning. It did not appear the records had been disturbed overnight.

Exhibit 90, ¶ 34-36, 42 (emphasis added).

268. Judge King's findings are further confirmed by the Morgan Report's interview of Lorna Jansen.⁴⁷

She and Jared Reed maintained the evidence room. Jared Reed and she had keys to the evidence room. To her knowledge the only other person to have a key to the evidence room was the locksmith As to her opinion of Tom Williams, she described him as a wonderful person with very strong moral character . . . a very good boss.

Exhibit G9, at 15.

⁴⁷ As stated previously, the Panel wrongfully excluded this Report.

269. At the hearing, Mr. Williams also provided the following testimony— also omitted by the Panel:

Q. [By Mr. Hazlett] Did you advise [Lorna Jansen] of the sensitive nature of those records?

A. Absolutely. She had specific instructions that those records were not to come out of that room unless the word came from me or if there was a question that she was to call me and confirm it.

Q. It sticks in my mind that there was one incident where one time you took – actually took the boxes of records down to Mr. Kline’s office for a review there. Do you recall that incident?

A. Yes.

Q. What happened?

A. There’s a little – been a little confusion and I think I testified at one point in time that we were doing a late night work and that several people were there with me. And then somebody pointed out to me subsequently that I prepared a memo based on this. But Mr. Kline had a large office and there were times that I would go down when he was not there and use his office. Because in one end of it it had a big conference table and I could lay things out. **And there was one night that I took records down there and I was working on them and I stayed late and I guess I was tired and I had multiple boxes and I left a box in his – in his office.**

Q. And when did you figure out that you had done that?

A. The next morning.

Williams 846:11-847:16 (emphasis added).

270. The record contains no evidence that Mr. Kline knew Mr. Williams left the records overnight in his office. Mr. Williams was working alone that night. *Id.*