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September 24, 2012

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Washington State Attorney General's Office
Attention: Rob McKenna, Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504

Public Disclosure Commission

Re: 45-Day Letter related to Troy Kelley's failure to report financial dealings accurately

Dear General McKenna:

The personal financial disclosures made by Troy Xavier Kelley ("Kelley") to the Public Disclosure Commission ("PDC") appear to substantially contradict other public documents regarding his sources of income, ownership of companies, and large payments received by his companies. Kelley has been the vice chair of a committee that oversees the insurance industry for nearly 6 years, but he has failed to report his connections to the industry he oversees. The F-1s are submitted under the penalty of perjury, so Representative Kelley's actions not only violate the Public Disclosure laws warranting substantial civil penalties but may also be criminal conduct under Ch. 9A.72 RCW and under RCW 42.17A.765(2)(c) (to the extent of any 2012 filings and amendments).

Representative Kelley is now a candidate for Washington State Auditor, a position of trust that oversees the state's finances, and is charged with identifying financial misconduct. False statements by Troy Kelley regarding his own financial matters cast serious doubt on his suitability for office, and should be investigated promptly. The contradictions described below are similar to what Kelley would have to investigate as State Auditor; therefore the public has a right to know if he violated the very principles of open government and financial transparency he would be tasked to enforce if elected.

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Kelley failed to report material changes to his financial condition - including continuing to claim income from closed companies, failing to report massive transactions between Kelley holding companies, and failing to report the closure of his business. The net effect was to hide the Old Republic v. Kelley and other lawsuits from the public, his political opponents, and his own political party which would have had a material and deleterious effect on his election campaigns.

Even if the F-1s were not knowingly false, the contradictions, inconsistencies and omissions evidence a careless disregard for details of Kelley's disclosure obligations. The Auditor's job requires meticulous attention to detail. The public deserves to know whether the reports were false, or merely careless, and to obtain a complete, accurate picture of Representative Kelley's financial dealings before voting in the election.

Kelley has been a Washington State Representative for the 28th district since 2007 (ending in 2012). His F1 disclosure filings cover 2005 through 2011.

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Facts regarding multiple violations of financial disclosure laws
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As a candidate for the Washington State House of Representatives 28th district, Kelley filed an F1 disclosure form covering 2005 ("2005 F1") in December 2005. For 2006 and 2007, he filed indicating only minor changes, continuing the misrepresentations from his earlier disclosures. Therefore, Kelley represented under the penalty of perjury that the information in the 2005 F1 continued to be true in 2006 and 2007.

In 2008, a set of class action lawsuits were filed by Steve Berman of Hagens Berman Sobol Shapiro (Seattle Post-Intelligencer, 5/4/2008):

- McFerrin v. Old Republic Title ("McFerrin v. ORT")
- Cornelius v. Fidelity National Title
- Bushbeck v. Chicago Title Company
- Jankanish v. First American Title

Kelley was named as a third party in McFerrin v. ORT and Cornelius v. Fidelity National Title. In 2011, Old Republic Title Company sued Kelley directly in Old Republic Title v. Troy X. Kelley and Diane Duffrin Kelley ("ORT v. Kelley") (Exhibit A)

This lawsuit was largely about events in 2008. ORT v. Kelley was settled out of court (Exhibit A, Part 1). Kelley sought to conceal the lawsuit, filing a motion to seal the public records. The court denied Kelley's motion to seal the entire case (Exhibit A, Part 2): "This case involves allegations that Mr. Kelley and others failed to refund unearned reconveyance fees to Old Republic Title's ("ORT") customers. In briefing filed with the court, ORT accuses Mr. Kelley of all forms of wrongdoing including misappropriation of customer funds, lying, fraudulently transferring funds, intentional spoilation of evidence, shady business schemes, tax evasion, and hiding from

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creditors... Mr. Kelley requests that documents relating to these allegations be sealed as they may subject Mr. Kelley to annoyance, embarrassment and harm to his legislative career... the court finds that these bases do not overcome the strong presumption of public access to the court's files."

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In 2009, Kelley filed a complete F1 disclosure form covering 2008 ("2008 F1"). For subsequent years he filed "no change." Therefore, Kelley represented under the penalty of perjury that the information in the 2008 F1 continued to be true in 2009, 2010, and 2011. A chart is included which outlines the various sources in each year of financial disclosure.

United National

Kelley's 2005 F1 reported a pair of companies, one named United National LLC, the other United National 14 LLC (hereby together known as "United National" since many documents do not distinguish between the two and because it doesn't affect the issues involved). In his 2005 F1, Kelley reported personal income from United National (for both himself and his wife, Diane Duffrin Kelley), business income, and large payments (anything over \$7,500) from several real estate companies, including ORT, Fidelity, and First American. In *ORT v. Kelley*, the contracts between Kelley and ORT begin in 2006 (Exhibit A, Part 4), a fact confirmed by the deposition of Patricia LeVeck in *McFerrin v. ORT* (Exhibit O, page 17 of 64). But the 2005 F1 reported in December 2005 that United National had a contract with ORT in 2005. Either ORT (and Kelley) left out a major contract in its case or Kelley's 2005 F1 report is incorrect (*Complaint #1*).

United National was registered during this period with the Washington Secretary of State ("WA SOS") (Exhibit B) and Department of Revenue ("WA DOR") (Exhibit C), registered with the Oregon Secretary

of State ("OR SOS") (Exhibit G), registered with the Nevada Secretary of State ("NV SOS") (Exhibit H), and had a website at propertyclose.com (Exhibit I). An assumed business name (trade name) was registered for United National with the OR SOS under the name: The Post Closing Department ("PCD") (Exhibit G). Also, United National registered with the Washington State Department of Licensing the following trade names: PCD, Post Closing Department, Post Closing Services, Property Close, Property Close Insurance, Property Close Insurance Services, propertyclose.com, United National, United National Insurance Services, and United National Post Closing (Exhibit D). The 2005 F1 only lists Post Closing Department (United National and PCD can reasonably be assumed) (Complaint #2). United National and Kelley were licensed to sell insurance by the Washington State Insurance commission and licensed to sell under the name "Property Close Insurance Services" (Exhibits E and N). A website advertising his services under that trade name in 2008 is still online (Exhibit L).

Kelley reported in the 2005 F1 that United National did "Document Preparation" (in the real estate market), but United National's website (Exhibit I) reports an extensive array of additional lines of business, affiliates, divisions, and departments. Lines of business listed in 2005 on the website, propertyclose.com include:

- 1) home warranty;
- 2) electronic appraisals;
- 3) tax reporting;
- 4) flood and credit reports;
- 5) 1031 tax-deferred exchanges;
- 6) venture capital;
- 7) property management; and
- 8) insurance: property, casualty, homeowners, auto, and life.

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United National's website (Exhibit I) mentions the following trade names:

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- 1) Post Closing Department;
- 2) propertyclose.com;
- 3) Property Close Insurance Services ("backed by multi-billion-dollar, Fortune 500 insurance companies"); and
- 4) MGM Property Management.

And to be clear, even though propertyclose.com was the URL, "United National" was prominently displayed on top, confusing the matter further (Exhibit I). Strangely, a company called MGM Property Management was a Tacoma-based business that started in August 2002 and became inactive in May 2012, registered to Douglas Huntington (Exhibit F). Was this company related to United National? (*Additional possible violation #1*)

On September 6th, 2012 in a debate on TVW's Inside Olympia, Kelley said in passing "I have an insurance business". On the business license registrations with the Department of Revenue, here are the NAICS numbers that indicated the primary line of business (Exhibit C):

United National LLC NAICS code: 524210 Insurance Agencies and Brokerages

United National 14 LLC NAICS code: 524298 All Other Insurance Related Activities

While some of the lines of insurance business may have been aspirational, Kelley's involvement in the insurance industry is well documented. Kelley failed to disclose "insurance" in his F1 business description of United National. Why is this particularly important? Since 2007, Kelley has been vice chair of the Legislature's *Financial Institutions and Insurance Committee* (aka *House Insurance, Financial Services & Consumer Protection Committee*; and currently called *Business & Financial Services Committee*) (Exhibit M). His connections to the insurance industry and potential conflicts of interest are exactly the type of disclosure the F1 is designed to provide

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(Complaint #3).

Kelley maintains his individual insurance license to this day (*Exhibit N*). United National's licenses were canceled in July of 2008, and two of United National's appointments were "Moved to Producer (MTP)" (meaning Kelley) in July of 2009. His last appointment from an insurance company expired in June of 2011. Should Kelley have reported income from his insurance work in 2008, 2009, 2010, or 2011? (*Additional possible violation #2*)

In 2007, Kelley's income from United National was reported in the 2005 F1 (there was no reported change on these incomes since the 2005 F1 filing), but only as a range of income. The household income for Troy and Diane Kelley from United National, according to the 2005 F1 was \$78,000 or higher. In *ORT v. Kelley*, the plaintiffs cited redacted copies of Kelley's 2007 IRS filing which reported the household income for the Kelley's from United National as \$69,500 (*Exhibit A, Part 3, Page 6*). Kelley overstated his income from this source when reporting to the PDC (*Complaint #4*).

With the new full-length 2008 F1 filing, United National was no longer listed as a company owned by Kelley. Yet according to the WA SOS, United National was not dissolved in Washington State until August 2008 (*Exhibit B*) nor inactivated with the WA DOR until June 2008 (*Exhibit C*). This was also confirmed in *ORT v. Kelley* (*Exhibit A, Part 3, Page 5*). So during half the reporting period of 2008, Kelley apparently owned United National but did not report it as required (*Complaint #5*). Business registrations in Nevada and Oregon were still active for all of 2008. Moreover, Kelley claimed personal income from United National (which he may have indeed earned since it was in operation for half the year). The F-1 instructions require reporting of interests held for part of the year.

But, Kelley reported no change for the next three years,

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representing receipt of personal income from United National, **Public Disclosure Commission** company that no longer existed (*Complaint #6*). The OR SOS revoked United National's registration for non-payment in 2009, and the NV SOS shows that United National was dissolved in 2010. This does not necessarily change the assertion in *ORT v. Kelley* that United National ceased operations in 2008. Archive.org shows no website for United National's propertyclose.com after March of 2007 (*Exhibit I*). Regardless, all sources show United National no longer existed in 2011, a year in which Kelley claimed substantial personal income from United National in the 2008 F1 (see chart).

The trade name "The Post Closing Department" continues to be used by Kelley's former business partner Amy Cobine. In 2008, however, she claimed to have severed ties in 2004 (*Exhibit J*). Archive.org shows the ties continued into 2005 (*Exhibit K*); this suggests that the ownership percentages of United National LLC and United National 14 LLC changed at some point in 2005 and may not have been properly reflected in the PDC filings for that year (or in the later years where "no change" was reported). The ownership percentages reported by Kelley for United National LLC (80%) and United National 14 LLC (50%) may also have been inaccurate. (*Additional possible violation #3*)

ATS

Also reported in the 2005 F1 was a company owned jointly by Troy and Diane Kelley called Attorney Trustee Services ("ATS") which reportedly provided a business income from 2005 to 2007. In the 2008 F1, Troy Kelley became the sole owner and ATS provided both personal and business income. (Just before the 2008 F1 was filed in April 2009, a minor change report in January 2009 added personal income from ATS.) A large payment from Fidelity to ATS was reported in the 2008 F1. In *ORT v. Kelley*, the plaintiff states "PCD had been doing reconveyance

work in Oregon, so he [Kelley] essentially transferred its contract to a previously inactive company that he and his wife and formed years earlier, Attorney Trustee Services (ATS)" (Exhibit A, Part 3, Page 5). This suggests that ATS did business in Oregon yet ATS was apparently not registered with the Oregon Secretary of State. If United National did transfer contracts to ATS in 2008, they were quite possibly worth more than \$7,500 and may have also included cash transfers, since the nature of the two businesses was to hold on to reconveyance fees in a bank account till the mortgage was paid off. A large payment is recorded in the 2008 F1 as new document tracking work for Fidelity but nothing else. Did ATS receive a large payment from United National in 2008? (*Additional possible violation #4*).

The Washington State Department of Revenue had one trade name registered for ATS: People Search USA. The 2005 F1 and 2008 F1 do not list any trade names for ATS (Exhibit M).

In December of 2010, Kelley dissolved ATS (Exhibits B and C). His 2011 F-1 indicated no change for the income reported from ATS. Kelley continued to report personal and business income in 2011 from ATS, a company that no longer existed (*Complaint #7*).

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Blackstone International

For all seven years of Kelley's F1 disclosures, he reported business income from Blackstone International ("Blackstone"). The company was founded in 2000 and is still active with the NV SOS (Exhibit H). The 2005 F1 reported a large payment from United National for "licensing" and presumably Blackstone received more such large payments from United National in 2006 and 2007. In *ORT v. Kelley*, the plaintiffs state that United National transferred \$3.8 million to Blackstone on June 18th 2008 (Exhibit A, Part 3, Page 6). But in the 2008 F1, Kelley did not report the receipt of any large payments from

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United National (*Complaint #8*).

Berkeley United

Berkeley United was created on June 23rd 2008, registered in Nevada with the NV SOS (Exhibit H), and first reported in the 2008 F1. In *ORT v. Kelley*, the plaintiffs state that Blackstone transferred \$3.65 million to Berkeley United in June 2008 (Exhibit A, Part 3, Page 6). But in the 2008 F1, Kelley did not report the receipt of any large payments from Blackstone (*Complaint #9*). In Kelley's deposition for *ORT v. Kelley*, he said that Berkeley United was 99% owned by Wellington Trust (Exhibit A, Part 3, Page 7). However, in the 2008 F1, Kelley reported that Berkeley United was 100% owned by him (*Complaint #10*).

Wellington Trust

In *ORT v. Kelley*, the plaintiffs stated "Kelley opened a bank account in Belize in the name of yet another entity he created (Wellington Trust) and activated the ability to wire the \$3.8 million in the Vanguard accounts [of Berkeley United and Blackstone] into the Belize account." (Exhibit A, Part 3, Page 7). Wellington Trust was not reported by Kelley in his 2008 F1 as a company that he owns (*Complaint #11*).

Summary of Alleged Violations

1. Kelley reported income from ORT in 2005 even though the contracts in *ORT v. Kelley* appear to begin in 2006.

Evidence: *ORT v. Kelley* (Exhibit A), *McFerrin v. ORT* (Exhibit O)

Relevant law: RCW 42.17A.710 (1) (n) other rules: the F1 form

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asked for "payments entity received from business customers of
\$7,500 or more" Public Disclosure Commission

2. Failed to report in 2005 to the PDC multiple trade names for United National that were registered and in active use. This misled the public about the extent and nature of Representative Kelley's extensive, interrelated businesses.

Evidence: Exhibits D, E, G, I, and L

Relevant law: RCW 42.17A.710 (1) (n) other rules: the F1 form asked for "Trade or operating name"

3. Failed to report in 2005 and later years to the PDC that United National was actively engaged in the insurance industry as a primary line of business.

Evidence: Exhibits C, E, I, L, and N

Relevant law: RCW 42.17A.710 (1) (n) other rules: the F1 form asked for "Brief description of business"

4. Reported in 2007 to the PDC a minimum household income from United National of \$78,000 but reported \$69,500 to the IRS.

Evidence: ORT v. Kelley (Exhibit A)

Relevant law: RCW 42.17A.710 (1) (f) "the value of the compensation"

5. Failed to report the ownership of United National during a portion of the year 2008;

Evidence: Exhibits B, C, G, and H

Relevant law: RCW 42.17A.710 (1) (b) "each bank account" (g) "name of any corporation"

6. Reported income for three years (2009, 2010, and 2011) from United National, a company which was dissolved by Kelley in August 2008; the actual sources of income for Representative Kelley during these years was apparently not reported.

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Evidence: Exhibits A, B, C, G, and H

Relevant law: RCW 42.17A.710 (1) (f) "business or commercial entity from whom compensation has been received"

7. Reported personal and business income in 2011 from ATS which was dissolved by Kelley in December 2010; the actual source of income for this year was apparently not reported.

Evidence: Exhibits B and C

Relevant law: RCW 42.17A.710 (1) (f) "business or commercial entity from whom compensation has been received"

8. Failed to report transfers of cash over \$7500 from United National to Blackstone International in 2008;

Evidence: ORT v Kelley (Exhibit A)

Relevant law: RCW 42.17A.710 (1) (n) other rules: the F1 form asked for "payments entity received from business customers of \$7,500 or more" and RCW 42.17A.715 "*No payment shall be made . . . to conceal the identity of the source of the payment or in any other manner so as to effect concealment.*"

9. Failed to report transfers of cash over \$7500 from Blackstone International to Berkeley United in 2008;

Evidence: ORT v. Kelley (Exhibit A)

Relevant law: RCW 42.17A.710 (1) (n) other rules: the F1 form asked for "payments entity received from business customers of \$7,500 or more" and RCW 42.17A.715 "*No payment shall be made . . . to conceal the identity of the source of the payment or in any other manner so as to effect concealment.*"

10. Reported a different ownership stake in Berkeley United to the PDC (100%) than testified to under oath (1%, the balance owned by Wellington Trust);

Evidence: ORT v. Kelley (Exhibit A)

Relevant law: Relevant law: RCW 42.17A.710 (1) (n) other rules:

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the F1 form asked for "percent of ownership"

11. Failed to report the ownership of Wellington Trust, Belize;

Evidence: ORT v. Kelley (Exhibit A)

Relevant law: RCW 42.17A.710 (b) "each bank account" (g) "name of any corporation ... or other entity" (n) other rules: the F1 form asked for "payments entity received from business customers of \$7,500 or more" and RCW 42.17A.715 "No payment shall be made . . . to conceal the identity of the source of the payment or in any other manner so as to effect concealment."

Additional possible violations suggested by the evidence

1. Kelley's website for Tacoma-based United National reported a division or affiliate called MGM Property Management. That trade name was not reported to the PDC. During the same time, a Tacoma company by that name operated from 2002 to May 2012. Were these two companies related? Did Kelley fail to report this company or trade name to the PDC?

Evidence: Exhibits F and I

Relevant law: RCW 42.17A.710 (1) (g) "name of any corporation"

2. Kelley maintained his personal insurance license after he dissolved United National, moving two of the appointments by insurance companies to his personal license. Did he earn more than \$1500 from insurance work in 2009, 2010, or 2011?

Evidence: Exhibits E and N

Relevant law: RCW 42.17A.710 (1) (g) "name of any corporation"

3. The ownership percentages reported by Kelley for United National LLC and United National 14 LLC may have been incorrect.

Evidence: Exhibits J and K

Relevant law: Relevant law: RCW 42.17A.710 (n) other rules: the F1 form asked for "percent of ownership"

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4. ATS may have received payments over \$7,500 from United National.

Evidence: ORT v. Kelley

Relevant law: RCW 42.17A.710 (n) other rules: the F1 form asked for "payments entity received from business customers of \$7,500 or more" and RCW 42.17A.715 "No payment shall be made . . . to conceal the identity of the source of the payment or in any other manner so as to effect concealment."

The following is the address and contact information for Representative Kelley:

Name of Candidate: Troy Kelley

Address of Candidate: P.O. Box 99415, Lakewood, WA 98496

Telephone Number of Candidate: 800.831.8397

Email Address of Candidate: troy@troykelley.com

Conclusion

I look forward to your office taking prompt action on this matter. If you have additional questions, please contact me.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the facts set forth in this attached complaint are true and correct to the best of my knowledge.

Signature: Kirby A. Wilbur

Printed Name: Kirby A. Wilbur

Address: 11811 NE 1st St, Suite A-306, Bellevue, WA 98005

Telephone Number: (425) 460-0570

Date Signed: 9/24/2012

Place Signed: Bellevue, WA

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Exhibits

- A. Old Republic Title Company v. Troy and Diane Kelley, individually and as a marital community; Blackstone International, a Nevada corporation; and Berkeley United, LLC, a Nevada Corporation (ORT v. Kelley) No. 2:10-cv-00038-JLR (US District Court, Seattle, WA)
- Part 1: Defendant's motion for Redaction in Filed Documents and/or Sealing, May 24th, 2011
 - Part 2: Order Denying Motion to Seal, June 1st, 2011
 - Part 3: Plaintiff' Motion for Preliminary Injunction, March 9th, 2011
 - Part 4: Declaration of Carleton Lago in Support of Plaintiff's Motion for Partial Summary Judgment
- B. Washington State Secretary of State: Troy Kelley registrations
- C. Washington State Department of Revenue: registrations
- D. Washington State Department of Revenue: United National trade names registered
- E. Washington State Insurance Commissioner: United National master record
- F. Washington State Secretary of State: MGM Property Management
- G. Oregon Secretary of State: Troy Kelley registrations
- H. Nevada Secretary of State: Troy Kelley registrations
- I. United National website archive:
http://wayback.archive.org/web/*/http://www.propertyclose.com
- J. Amy Cobine letter: <http://www.postclosingdepartment.com/UNmemo.html>
- K. Amy Cobine's Post Closing Department website archive:
http://wayback.archive.org/web/*/http://www.postclosingdepartment.com
- L. Online insurance ad for Troy Kelley:
<http://www.newpolicy4less.com/insurance-agent-283501/troy-z-kelley.aspx>
- M. Washington State Department of Revenue: ATS trade names registered
- N. Washington State Insurance Commissioner: Troy Kelley master record

O. David McFerrin and Katherine McFerrin, husband and wife, Koos J. Jager and Cindy L. Jager, husband and wife, on behalf of themselves and others similarly situated v. Old Republic Title Company (McFerrin v. ORT) No.-CV-5309-BHS (US District Court, Tacoma, WA) --Exhibits 1-20 for Docket #53 Declaration of Steve W. Berman in support of Plaintiffs' Motion for Class Certification, June 5th, 2009.

cc: Mark Lindquist, Pierce County Prosecutor
Philip Stutzman, Director of Compliance, Public Disclosure Commission

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Phil Stutzman

From: Peter Graves [PeterGraves@wsrp.org]
Sent: Monday, September 24, 2012 2:53 PM
To: Phil Stutzman
Subject: 45 Day Letter re: Troy Kelley
Attachments: WSRP 45 Day Letter.pdf

Hi Phil –

Per our discussion, here is the 45 day letter we're sending to the AGO today. I am mailing you a drive with all of the supporting materials we are sending to the AGO as well.

Peter Graves

Executive Director
Washington State Republican Party
(425) 460-0570
petergraves@wsrp.org