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November 9, 2012

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Re: Stephen M. Howe complaint

Case No. DA11,674

Gentlemen:

Please consider this letter as the formal written response of Johnson County District Attorney Stephen M. Howe to the complaint of Cheryl Sullenger dated August 30, 2012. The complaint is based on mistaken factual assumptions and misinterpretations of relevant law. None of the multiple accusations of ethical misconduct has any merit.

The decision to terminate Johnson County District Court case number 07CR2701 was legally and ethically correct. The facts relied upon in reaching that decision would not have supported a contrary decision. No additional information has been discovered since the dismissal of that case to justify an inference that the decision was a mistake. The suppositions of Ms. Sullenger to the contrary are speculative misinterpretations of the information available to the general public.

Ms. Sullenger's complaint can be broken down into three aspects of concern: 1) the reasons for concluding that some of the charges were barred by the statute of limitations; 2) the

reasons why there was insufficient evidence to support the charges relating to falsification of records; and 3) the reasons why there was insufficient evidence to support the charges relating to failure to determine fetal viability. A summary of the reasons for these three decisions was set forth in a press release dated August 17, 2012. The information in that press release was correct when it was issued, and remains correct to this day.

The circumstances that ultimately made it necessary to dismiss the charges in Johnson County District Court case number 07CR2701 did not result from any act or omission of Johnson County District Attorney Stephen M. Howe. All of the critical circumstances already existed before he took office, and there was nothing he could do to turn the clock back and change the facts. Mr. Howe diligently pursued the prosecution of this case until there was no longer any prospect of being able to correct the mistakes and oversights made by others that prevented the case from being pursued to a successful conclusion. He confirmed the destruction of the original records held by KDHE. He inspected the known copies of the records, including those held by Judge Anderson and the Attorney General's office. He researched and investigated the law in a thorough and competent manner.

The charges that were dismissed as time barred were already untimely when the case was originally commenced by former Johnson County District Attorney Phill Kline. If there were facts that might have tolled the running of the statute of limitations, Kansas law required that those facts be set forth in the criminal complaint. No facts were known at that time, and none have been revealed since, that would operate to extend the statute of limitations under well-settled precedents. Ms. Sullenger relies on a legally irrelevant civil case that has no bearing on a criminal prosecution in suggesting that those counts were timely filed.

All of the charges related to falsification of the defendant's retained copies of the termination of pregnancy reports ultimately depended upon a comparison of those documents with the original reports filed with the Kansas Department of Health and Environment. Unfortunately the original documents were destroyed by KDHE before Johnson County District Attorney Stephen M. Howe took office. Without those originals, it became impossible to establish the authenticity of the remaining photocopies of the records held by other agencies. The remaining copies could not be used as evidence to prove the commission of the charges related to falsification.

Finally, it proved impossible to establish that any violation of Kansas law concerning testing for fetal viability had occurred. Expert medical consultation confirmed that there are no individualized tests of fetal viability, separate and apart from the methods employed to determine gestational age. Each of the pregnancy terminations charged in this case involved a fetus with a gestational age that was too short to permit a reliable medical conclusion that the fetus was "more probably viable than not" at the time of termination. Without reliable medical evidence to support a finding that any of the pregnancies involved a fetus that was more probably viable than not, a conviction supportable on appeal could not have been obtained. Ms. Sullenger's supposition that Kansas law requires the performance of redundant and superfluous

individualized testing is not legally correct, under well established principles of statutory interpretation.

It is ethically correct and proper for a prosecutor to tell the court when a criminal case cannot be established successfully with admissible evidence, and to request the dismissal of the charges. No ethical rule requires a prosecutor to pursue a futile criminal case. To the contrary, prosecutors are ethically obligated to dismiss a case they know they cannot prove. See K.R.P.C. 3.8(a). Neither Mr. Howe nor Attorney General Derek Schmidt provided false information to the Court or to the general public at any stage of the prosecution. The desire to conclude that admissible evidence exists when in fact it does not, is not enough to justify continuation of a prosecution that is bound to fail on the evidence and the law.

A summary of the reasons why the complaints made by Ms. Sullenger are factually erroneous or legally incorrect or both follows. No attempt will be made to state exhaustively why every mistaken assumption is a mistake. In the interest of brevity the response on each group of issues will be concise.

- 1) Some of the charges were barred by the statute of limitations.

At the time the original charges were filed, more than two years had already elapsed since the termination of a number of the pregnancies described in the criminal complaint. At that time the controlling statute of limitations was two years. See K.S.A. 2003 Supp. 21-3106, since repealed. No allegation of concealment was included in the charges filed by Mr. Kline. That omission prevented a successful prosecution for those events:

“Failure to allege concealment in the information bars the State from relying on concealment as an exception to the statute of limitations. State v. Schonenberger, 173 Kan. 665, 669, 250 P.2d 777 (1952); see also Annot., “Necessity of Alleging in Indictment or Information Limitation-Tolling Facts,” 52 A.L.R.3d 922 (majority of jurisdictions consider it necessary). Even though the defendant did not raise this argument below, a defect in the complaint “shall be noticed by the court at any time during the pendency of the proceeding.” State v. Rasch, 243 Kan. 495, Syl. ¶ 2, 758 P.2d 214 (1988).” See State v. Jones, 13 Kan.App.2d 520, 522-523, 775 P.2d 183 (1989)

The case cited in Ms. Sullenger’s complaint interprets the civil statute of limitations applicable to claims of medical malpractice. That statute has no application to a criminal prosecution against a health care provider. Mr. Howe played no role in the original drafting of the criminal charges. He is not responsible for a legal error made while Mr. Kline was Johnson County District Attorney. There was no factual basis to toll the statute of limitations, whether the issue was pled or not.

- 2) There was insufficient evidence to support the charges relating to falsification of records.

Issues related to the need to authenticate copies of the KDHE records in order to support the charges brought by Mr. Kline have already been litigated in the underlying case. See *State v. Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc.*, 291 Kan. 322, 241 P.3d 45 (2010). There should be no need to restate in detail the information contained in that published opinion. That litigation would not have been necessary if unauthenticated photocopies of records were admissible in evidence. Copies of records are not admissible in evidence without authentication as outlined in K.S.A. 60-465 *et seq.* Subjective belief that the photocopies are accurate is not enough, under the plain language of the statutes.

The October 15, 2010 Supreme Court opinion assumed that the original KDHE records were still in existence. The opinion noted a statement by KDHE counsel made at a hearing held on April 3, 2008 concerning Mr. Kline's request for authentication of documents:

"At the hearing, the lawyer for the KDHE said that no witness from the agency could authenticate the KDHE reports produced by the agency in the Inquisition as true and correct copies of the reports submitted to the agency by CHPP without doing a comparison of the two sets of documents. The agency was unwilling to do such a comparison unless ordered to do so because of the limitations of K.S.A. 65-445." See 291 Kan. at p. 344.

The Supreme Court opinion noted the need for a comparison between original KDHE documents and the documents produced by the defendant in order to prove the felony charges:

"For Counts 1 through 23, the only felony counts, the State appears to rely entirely on what Judge Anderson and Cavanaugh understood defense counsel Irigonegaray to say in his letter when producing documentation of CHPP's written determinations of fetal viability. The charges hinge on Irigonegaray's description of the items as copies of reports submitted previously by CHPP to KDHE. The State hopes to demonstrate that the documents are not in fact copies of the KDHE reports by comparing them to the reports in the KDHE's files, and it suggests that the "copies" produced by CHPP may have been created only after special counsel Cavanaugh raised an issue about their absence. For this reason, **the State needs authenticated copies of the reports filed by CHPP as they exist in KDHE's files**, which it will then compare to the items produced by CHPP to Cavanaugh." (See 291 Kan. at p. 351; emphasis supplied)

The charges related to falsification of records arose from apparent differences between KDHE reports and documents produced by the defendant. There should have been no differences between these two sets of records. Establishing the existence of the discrepancies was central to these charges. No direct proof of falsification was available. An inference of wrongdoing resulting from the otherwise unexplained differences would prove the charges, if they could be

proved. At one time, before Mr. Howe became District Attorney, there may well have been sufficient evidence to prove the charges related to false writings. That evidence was destroyed or lost during a time when Mr. Howe was not yet District Attorney and before Mr. Schmidt became Attorney General.

KDHE first informed Mr. Howe in September of 2011 that the original documents had already been destroyed. From that point on, all efforts related to determining whether there might still exist a set of copies that could be authenticated by some witness. Mr. Kline and his staff made multiple copies of the KDHE documents. Those copies were not marked in such a way to assure that they could later be identified as true duplicates of the original documents. Despite diligent searching in every location where those duplicate copies might have been kept, they have not turned up. All that searching has discovered is some partial and/or unauthenticated copies of copies that no witness can confirm are duplicates of the originals.

For a time it was believed that first-generation copies of the destroyed originals might have been retained in the office of the Kansas Attorney General. It is the belief of Johnson County District Attorney Howe that the first generation copies were destroyed during prior administrations. Even if it is assumed that first-generation copies still exist somewhere, extensive efforts to locate those copies have been unsuccessful. KDHE personnel advised Mr. Howe and his staff that the surviving second generation copies could not be authenticated. If the first generation photocopies were to be discovered somewhere today, there would still be serious and probably insurmountable problems related to the chain of custody that would prevent their use as evidence.

Ms. Sullenger erroneously infers that the copies held by Judge Anderson were the originals of the KDHE records. Inspection has revealed that the documents in his possession were only redacted second generation copies of the original documents which once were held by KDHE. Ms. Sullenger erroneously infers that the copies held by Judge Anderson were never reviewed to determine whether they were usable as substitutes for the destroyed originals. Mr. Howe travelled to Topeka in late 2011 to inspect the documents held by Judge Anderson on dates that can be confirmed by review of travel reimbursement records. He and his assistants confirmed that Judge Anderson possessed only second generation copies that no KDHE witness could authenticate.

Ms. Sullenger erroneously infers that the copies held by the Kansas Attorney General were never reviewed to determine whether they were usable as substitutes. The records held at the office of the Attorney General were also reviewed by Mr. Howe in 2011, again on dates that can be confirmed by reference to travel reimbursement records. By that time there were no usable copies held at the office of the Attorney General.

- 3) There was insufficient evidence to support the charges relating to failure to determine fetal viability.

The charges that remained were dismissed for lack of legal merit. All related to the determination of fetal viability, on a case by case basis. This decision was based on applying the medical evidence to the legal standard set forth in the criminal statute. These charges would have potential merit if there was reason to believe that some available medical test could have shown that the fetus was "more probably viable than not". A mere possibility or a probability less than 50% would not have been sufficient.

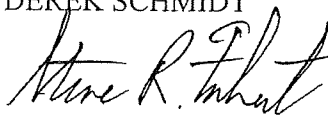
These legal conclusions were based on substantial medical research and expert medical advice. That information was summarized in the press release of August 17, 2012. It remains available for review by authorized representatives of the Disciplinary Administrator. The details of that research will not be set forth here in any greater detail, in the interest of brevity.

I enclose a point-by point response to the allegations of the complaint to address the allegations with greater particularity.

Investigation will reveal the extent of the effort that went into trying to establish the facts that would support the charges made in Johnson County District Court case number 07CR2701. Mr. Howe will of course cooperate fully in all efforts to establish the factual and legal circumstances that compelled the dismissal of those charges. Please contact me directly to arrange access to any relevant materials or to arrange interviews.

Very truly yours,

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SRF:rm

Response of Johnson County District Attorney Stephen M. Howe
Case No. DA 11,674

1. [no response required]
2. [no response required]
3. Judge Anderson assumed custody of a **copy** of the CHPP TOP documents on 11-4-05. He later assumed custody of copies of the redacted medical records per the *Alpha Beta* decision. AG Kline received copies of the redacted medical records on 10-24-06. The KDHE TOP (Form vs213) copies of records for the year 2003 were provided to AG Kline pursuant to an inquisition subpoena on July 6, 2004. After the KS S Ct *Alpha Beta* decision, AG Kline obtained from CHPP their copies of 29 redacted medical records. Those records included copies of the TOP forms that CHPP had submitted to KDHE.
4. These records formed the basis for JO Co DA Kline to file 107 criminal counts against CHPP 10-17-07; 49 counts were related to the KDHE TOP records.
5. AG Six obtained a Protective Order from the KS S Ct in April 2008 regarding Judge Anderson's records and testimony in the CHPP case.
6. On 10-15-10 the KS S Ct issued a ruling lifting the Protective Order from Judge Anderson regarding redacted medical records and TOP forms and remanded the case to JO Co D Ct for prosecution of the CHPP charges.
7. On 10-24-11 JO Co DA Howe told the Judge Tatum that the KDHE's original TOP forms from CHPP were destroyed by KDHE in 2005 and were no longer available for authenticating the second- or third-generation copies he had. He requested more time to attempt to authenticate his copies.
8. 11-9-11 DA Howe requested dismissal of 49 counts related to the medical records and TOP forms. No original or first-generation copies remain in existence to authenticate his copies.
9. On 11-8-11, AG Schmidt formally requested SN Co Sheriff Dick Barta to "conduct a thorough and independent investigation of this matter." SN Co DA Taylor "agreed to serve as the agency that will receive and consider the results of your investigation." "[T]his matter" referred to the disappearance and possible destruction in 2009 of photocopies of the original TOP forms from CHPP that KDHE had destroyed in 2005. Based on chain of custody documents, the photocopies at one time had been secured in a locked evidence room in the Attorney General's Office.

On 2-17-12, SN Co DA Taylor released a statement that the documents shredded in April of 2011 [sic] by AG Six's employees were unrelated to the CHPP case. DA Taylor's statement said the Sheriff's investigation focused only on the document shredding in 4-11 [sic], and the report did not shed any light on the whereabouts of the missing TOP form photocopies involved in the CHPP case.

The Shawnee County Sheriff's and Shawnee County DA's Offices may or may not have investigated the shredding of other documents at other times. AG Schmidt and DA Howe did not interfere with the independent investigation's scope or procedures. DA Howe's November 2011 statements to Judge Tatum were based on information he possessed at that time, which included documents obtained during his search for the records and interviews of witnesses. The documents in question (the first-generation copies) are not at the AG's Office, and the statements by DA Howe are still accurate.

10. On 7-31-12, DA Howe consulted with AG Schmidt on legal issues regarding potential dismissal of 26 charges. After review of all the evidence and applicable criminal law, DA Howe correctly found that no acts of concealment occurred prior to the statute of limitations running. DA Howe followed the law when dismissing the charges.

11. The press release issued by DA Howe on 8-17-12 after consulting with AG Schmidt included that true statement.

12. Cases discussing exercise of legislative powers are not relevant to the exercise of prosecutorial judgment and discretion in the executive branch of government.

13. The prosecutor with sole discretion over pursuing the criminal charges consulted with medical and legal authorities, including the State's top law enforcement official - the Attorney General, prior to concluding that the multiple problems with evidence left him no ethical choice but to dismiss the charges. In Kansas, prosecutors are held to a 'quasi-judicial' standard in exercising their discretion to prosecute criminal charges in the name of the State. This requires them to dismiss a case such as this one where the criminal charges are based on mishandled and unusable evidence and legal theories that are unsupported by medical standards.

14. The Complainant's attempt to obtain information from Judge Anderson missed the facts that (a) DA Howe telephoned Judge Anderson to confirm his custody of the records in question and to schedule an appointment with the Judge to discuss the records and view all of them, and (b) DA Howe and several staff members met in person with Judge Anderson on 9-14-11 at the Judge's office to discuss and review all of the medical records and documents in the Judge's custody at that time.

A second meeting with Judge Anderson was held on 10-12-11 to inventory the documents further and determine whether they were first- or second-generation copies of the KDHE records and could be authenticated. All present concluded that the documents were not originals and were not first-generation copies of the originals.

When Judge Anderson issued the Protective Order on 1-12-12, DA Howe and his staff had already been through the documents referenced in the Order. However, these allegations primarily fail to recognize that none of the copies remaining in existence can be authenticated by KDHE.

15. See response to #14 above. Neither DA Howe nor AG Schmidt interfered with the independent investigation of record destruction that was conducted by the SN Co Sheriff's Department or the report of conclusions that was issued by SN Co DA Taylor.

16. This false statement is denied in its entirety.

17. It is a fact that the original TOP forms were destroyed by KDHE in 2005 pursuant to its record retention and destruction policies, as no one had ever placed a "litigation hold" on them. By 10-25-11, after viewing all relevant documents in Judge Anderson's possession the previous month and all relevant documents existing in the Attorney General's Office, DA Howe and his staff concluded that no originals and no first-generation copies of the original TOP forms existed.

All documents in those locations as well as the documents held by the JO Co DA's Office bore photocopies of three-hole punches on the left margins. The original documents and the first-generation copies of the documents did not have these three-hole punch marks. Of the documents that still existed, some had been written on, some had been removed and then part of the removed documents replaced in a different location, some had been placed in car trunks and private apartments, and the sets of copies did not match one another. DA Howe concluded that the first-generation copies were most likely destroyed by the AG's Office in 2009.

18. DA Howe made this true statement to Judge Tatum.

19. No existing (second-generation and beyond) versions of the CHPP TOP forms can now be authenticated as (at the risk of being repetitive!) the originals were destroyed in 2005 by KDHE and the first-generation copy is missing – presumed destroyed by the AG's Office in 2009. KDHE officials stated to DA Howe in 2011 that they had no way to authenticate the version held by the JO Co DA's Office. KDHE is, in fact, unable to authenticate any copy of the TOP forms still in existence.

DA Howe, in consultation with AG Schmidt among others, concluded that the criminal charges could not be proved without the necessary admissible evidence and properly exercised his prosecutorial discretion, as he is required to do by law, in requesting dismissal of the related charges. Had the prior DA or prior AGs done a better job of authenticating and protecting key documents and their chain of custody, the charges might have been maintained.

20. DA Howe requested time from Judge Tatum in which to attempt to obtain documents from which he could authenticate the partial copy of copies in the JO Co DA's Office. He was seeking the original KDHE documents or the first-generation copy, presumably in the possession of the KS AG's office after being turned over to the KBI for transfer to AG Morrison's Office by Judge Anderson in January of 2007.

At no time did DA Howe ever represent to Judge Tatum that he had "the last surviving copies." The transcript speaks for itself. After concluding that both versions he sought had been destroyed, confirming that the records in Judge Anderson's custody could not be authenticated and consulting with AG Schmidt, DA Howe requested dismissal of the charges that could not be maintained. The poor quality of evidence acquired and maintained by AG-then-DA Kline was the reason for dismissal of the 49 counts in November of 2011.

21. True.

22. The Supreme Court's decision [*State v. CHPP*] discusses various sets of copies of the records extensively, however, it appears that the continued existence of the KDHE original forms was not documented at that time, merely assumed. Counsel for KDHE moved to quash the subpoena on legal grounds, and the existence of the records was not addressed.

23. This statement is false. The original **copy** of the TOP records was released back to the custody of the KBI by Judge Anderson for delivery to the AG's Office. There are chain of custody documents that support this transfer. There is no such "pristine" evidence existing anywhere, including that in Judge Anderson's custody. Judge Anderson's records "speak for themselves." They all have *photocopied* three-hole punches on them. The originals did not. The first generation copy had no three-hole punches or photocopies of punches.

24. Judge Anderson noted discrepancies between the two sets of CHPP TOP documents in his custody.

25. It was the State's theory that CHPP originally copied only the front side of the TOP forms and kept incomplete copies for its records. When CHPP later responded to a request from Judge Anderson for a copy of CHPP's copies, clinic employees discovered the error and may have committed a felony (creating false records) to cover up a misdemeanor (failure to maintain records required by law) crime.

26. The Complainant's statements have nothing to do with the allegations against DA Howe.

27. The Complainant's statements have nothing to do with the allegations against DA Howe.

28. The Complainant's statements have nothing to do with the allegations against DA Howe.

29. DA Howe agrees this was Judge Anderson's testimony. The Complainant's statements have nothing to do with the allegations against DA Howe.

30. The Complainant's statements have nothing to do with the allegations against DA Howe.

31. The Complainant's statements have nothing to do with the allegations against DA Howe.

32. DA Howe and AG Schmidt consulted regarding the missing first-generation photocopies that KDHE provided to AG Kline and agreed that an independent investigation into their disposition was appropriate. AG Schmidt requested the SN Co Sheriff's Department to investigate.

33. The SN Co Sheriff's Department conducted the investigation as it saw fit. The results were turned over to SN Co DA Taylor, and his conclusions limited to that investigation were announced publicly in a press release.

34. DA Howe eventually requested dismissal of the charges based on application of the law and the evidence.

35. DA Howe has no knowledge of this.

36. DA Howe has no knowledge of this.

37. DA Howe has no knowledge of this. DA Howe and his staff members had already met with Judge Anderson and his administrative assistant to discuss and review all relevant records in Judge Anderson's custody FOUR MONTHS prior to the Judge's 1-12-12 Protective Order.

38. DA Howe has no knowledge of this.

39. DA Howe has no knowledge of this.

40. Based only on the Kansas Open Records Act response, the Complainant was unable to locate written documentation of DA Howe's contacts with Judge Anderson regarding his review of the records in Judge Anderson's custody **four months** before the Protective Order was issued. Complainant appears to be unaware of the telephone calls and personal meetings between DA Howe, his staff and Judge Anderson, so she erroneously concluded they did not occur. As stated previously, chain of custody documents prove that the original **copies** of the TOP records were transferred back to the AG's Office by the KBI. The remaining second-generation copies held by Judge Anderson cannot be authenticated by KDHE.

41. This claim is false. See response to #40 above.

42. It is clear that the poor job of evidence preservation by those in the Attorney General's office from 2003 through 2009 - as well as the fact that JO Co DA Kline apparently filed 107 criminal charges in 2007 without checking to see whether the original documents were even still in existence - resulted in dismissal of many of those charges in 2011 and 2012. DA Howe denies there was any such conspiracy.

43. There is nothing in this paragraph that has any relevance to DA Howe's decision in consultation with AG Schmidt that the criminal charges had to be dismissed for the various reasons stated above.

44. There is nothing in this paragraph that has any relevance to DA Howe's decision in consultation with AG Schmidt that the criminal charges had to be dismissed for the various reasons stated above.

45. This false and reckless allegation is denied in its entirety. There is nothing in this paragraph that has any relevance to DA Howe's decision in consultation with AG Schmidt that the criminal charges had to be dismissed for the various reasons stated above.

46. This false and reckless allegation is denied in its entirety.

47. Neither Judge Anderson nor the AG's Office has the first-generation copy of the KDHE CHPP records. At no time during AG Schmidt's administration, beginning in January of 2011, has that office possessed the original or any first-generation copy of the records. DA Howe cannot speak to what a reporter claims another person claims to have seen.

48. All versions of the records that could have been used to authenticate the copies in the JO Co DA's Office were no longer in existence by 2010. It is undisputed that KDHE destroyed its originals in 2005. It is believed the first-generation copy was most likely destroyed by the Attorney General's Office sometime in 2009.

49. DA Howe stands ready to cooperate in every aspect of a full investigation into these false and delusional allegations.

50. Complainant erroneously cites KRPC 1.5 [Fees] but probably means **KRPC 1.1 - Competence**. It is not DA Howe who filed 107 charges without any admissible evidence, medical support or within the statute of limitations in 2007. **KRPC 3.2 on bringing only Meritorious Claims and Contentions** after independent investigation into the facts and the law is more on point here.

A. After meetings with Judge Anderson to discuss and review the records in his custody in September and October of 2011, DA Howe concluded that those records were second-generation or beyond copies and could not be authenticated by KDHE.

B. In consultation, DA Howe and AG Schmidt concluded there were no prior acts of concealment alleged which would thereby toll the statute of limitations.

C. DA Howe obtained expert witnesses from KU Medical Center when the original witness became unavailable. No credible witness supported the required level of proof needed to support the charges. Kansas law at the time required prosecutors to prove that the unborn child was "more likely viable than not." The well-established medical evidence did not support that Kansas legal standard.

D. Again, legislative authority to enact the law is separate from the authority of the executive branch to enforce the law and is not relevant to the exercise of prosecutorial discretion involved here.

51. **KRPC 1.3 – Diligence [1]** explains a lawyer's professional discretion in determining the means to pursue a matter. For prosecutors, the level of this discretion has been termed by the appellate courts as "quasi-judicial." DA Howe, in consultation with AG Schmidt, exercised his prosecutorial discretion to dismiss these non-maintainable charges. See also KRPC 3.8(a).

52. KRPC 3.3 – Candor to the Tribunal

A. DA Howe has personally viewed the copies in Judge Anderson's custody on two occasions, and they are far from pristine. They are at best second-generation copies. He truthfully told the court that the remaining copies in the possession of the JO Co DA's Office, Attorney General's Office and those with Judge Anderson could no longer be authenticated, since the KDHE originals had been destroyed in 2005 – two years before DA Kline filed the related criminal charges.

B. DA Howe, AG Schmidt and the Court are aware of the law regarding the applicable statute of limitations in these cases.

C. DA Howe correctly cited this ruling.

D. Again, Complainant cites a case regarding legislative authority that is not applicable here.

53. KRPC 3.4 – Fairness to Opposing Party and Counsel

In his diligent attempts to locate and authenticate the copies of records in the JO Co DA's Office, DA Howe did not alter, destroy or conceal any document, did not encourage anyone else to do so and obstructed no one's access to evidence. On the contrary, he spent months attempting to locate records that could be used to authenticate the poor and incomplete copies in the possession of the JO Co DA's Office as left by DA Kline. This included his review of records in the possession of the AG's Office and those with Judge Anderson.

54. KRPC 4.1 – Truthfulness in Statements to Others

The press statement of DA Howe on August 17, 2012 contains only true statements of facts upon which he, in consultation with AG Schmidt, exercised his discretion to dismiss the remaining criminal charges.

55. KRPC 8.4 – Misconduct

As noted above, all statements made verbally and in writing by DA Howe regarding this matter were true and were based upon his personal investigation into the facts and the law after consultation with the Kansas Attorney General.

56. Complainant has no standing to request any such relief. That said, all copies of relevant documents in the possession of the JO Co DA's Office and the Kansas Attorney General's Office are under "litigation hold" to prevent further contamination or destruction of the documents DA Howe and Attorney General Schmidt inherited from their predecessors.

57. Following full investigation of this baseless, meritless and frivolous complaint, Johnson County District Attorney Stephen Howe respectfully requests a letter of dismissal on the ground that it lacks merit.

Key:

JO Co DA Howe = Johnson County District Attorney Steve Howe

AG Schmidt = Kansas Attorney General Derek Schmidt

AG or DA Kline = Kansas Attorney General, later Johnson County District Attorney
Phill Kline

DA or AG Morrison = Johnson County District Attorney, later Kansas Attorney General
Paul Morrison

AG Six = Kansas Attorney General Steve Six

Judge Tatum = Johnson County District Court Judge Steve Tatum

Judge Anderson = Shawnee County District Court Judge Richard Anderson

DA Taylor = Shawnee County District Attorney Chad Taylor

KS S Ct = Kansas Supreme Court

KDHE = Kansas Department of Health and Environment

CHPP (OP) = Comprehensive Health Planned Parenthood (of Overland Park)

TOP = KDHE Termination of Pregnancy forms #vs213

SN Co Sheriff's Department = Shawnee County Sheriff Dick Barta's Department

Complaint Narrative

Background

1 The Disciplinary Administrator's office has full knowledge of abortion clinic investigations conducted by former Attorney General and Johnson County District Attorney Phill Kline between 2003 and 2007 during his tenures in both offices, so this narrative will only briefly touch on the facts relevant to the complaint against Steve Howe.

2 As Attorney General Phill Kline requested and received a subpoena for abortion-related medical records from Comprehensive Health of Planned Parenthood (CHPP) from Shawnee County District Court Judge Richard Anderson, who was overseeing Inquisition 04-IQ-3, an inquisition conducted by the Office of the Kansas Attorney General. Kline further requested and received a subpoena for Termination of Pregnancy reports filed by Planned Parenthood with the Kansas Department of Health and Environment (KDHE).

3 Judge Anderson assumed custody of the original production of Termination of Pregnancy forms on November 4, 2005. Judge Anderson also assumed custody of the original production of the redacted medical records produced under subpoena in compliance with the Alpha Beta v. Kline Supreme Court decision. Kline received copies of the redacted abortion records October 24, 2006.

4 Those documents were later the basis for 107 criminal charges filed by Kline as District Attorney against CHPP on October 17, 2007 (*Kansas v. Comprehensive Health of Planned Parenthood*, Case no. 07CR2701, (See Attachment 1). Those charges included 49 criminal counts related to K.S.A. 21-3711, Making a False Writing, and K.S.A 65-6703(b)(5), Failure to Maintain Records.

5 Former Attorney General Steve Six requested and received a Protective Order from the Kansas Supreme Court on April, 2008, (See Attachment 2) blocking Judge Anderson from testifying or producing the evidence in his possession for the purpose of prosecuting *Kansas v. Comprehensive Health of Planned Parenthood*.

6 Issues regarding the evidence on which Kline based this case went up on appeal to the Kansas Supreme Court. In October, 2010, the Supreme Court issued a ruling that lifted a protective order on Judge Anderson and the abortion records and KDHE Termination of Pregnancy forms and remanded the case back to the District Court for prosecution. (See Attachment 3)

7 During a hearing held on October 24, 2011 on Johnson County District Court, Howe told Judge Stephen Tatum that the originals of the KDHE Termination of Pregnancy forms had been destroyed in 2005 and could not be used to authenticate the copies in Howe's possession. He further indicated that copies of the same records that were in the possession of the Attorney General's office had been destroyed under AG Steve Six in 2009. Howe asked for more time to further investigate whether there was any other way to authenticate his copies. (See Attachment 4)

8 On November 9, 2012, the 49 charges related to Making a False Writing and Failure to Maintain Records were dismissed after District Attorney Howe informed Judge Stephen Tatum that the last complete copy of the evidence had been destroyed, making authentication of his copies impossible, according to official court transcripts of the hearing. (See Attachment 5)

9 Attorney General Derek Schmidt asked Shawnee County District Attorney Chad Taylor to investigate the shredding evidence that was in the custody of the Attorney General's office. On February 11, 2012, Taylor released a press statement (See Attachment 6) indicating that records destroyed under the auspices of Attorney General Six in April, 2009, were unrelated to Planned Parenthood of Kansas. Taylor never concluded if the KDHE Termination of Pregnancy reports related to Planned Parenthood had been destroyed, as asserted by Howe. In fact, the implication of Taylor's statement was that the records pertaining to Planned Parenthood still remained in the custody of the Attorney General's office, making Howe's representations about the destruction of evidence to the Court on October 24 and November 9, 2011, false statements.

10 A second group of 26 charges against CHPP were dismissed at Howe's request on August 3, 2012. Howe indicated that the charges were filed after the statute of limitations had run out before the charges were ever filed. In a Joint Press release, Howe and AG Schmidt indicated, "There were no facts which would toll the running of the Statute of Limitations." However, a Kansas Supreme Court decision that indicates that this conclusion is in error. *Robinson v. Shah*, 23 Kan. App. 2d 812, 936, P.2d 784 (1997), indicates that the statute can be tolled if deception is involved. Obviously deception was involved in this case since Planned Parenthood was accused of manufacturing evidence to cover for other crimes. (See Attachment 7)

11 The final group of 32 charges was dismissed on August 17, 2012, with Howe making the following statement in his joint press release with Schmidt.

"The United States Supreme Court has said that reasonable medical debate should not subject individuals to criminal prosecution." (See Attachment 8)

12 The cases cited by Howe and Schmidt to support this claim are outdated 1970s case law that has since given way to more modern rulings, especially by *Gonzales v. Carhart*, 550 U.S. 124, 164 (2007), which states in part: "Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts." (See Attachment 9)

13 Thus, today, criminal laws regulating abortion are valid despite the existence of a "reasonable medical debate," just the opposite of what Howe and Schmidt said in their fallacious 4-page statement. It is clear they groped for any excuse to justify destroying the case, hoping that no one would catch them at their deceptive use of inapplicable law. The entire case was dismissed at Howe's request piece by piece under false pretenses at every turn.

False Statements Made Judge Tatum

14 A Protective Order issued by Judge Richard Anderson on January 12, 2012, which was obtained by me through a Kansas Open Records Act request proves that records crucial to the criminal prosecution of Comprehensive Health of Planned Parenthood (CHPP) of Overland Park that were said to have been destroyed by Howe and Schmidt currently exist and were placed under seal in the custody of the Shawnee County Clerk of the Court by Judge Richard Anderson on January 12, 2012. (See Attachment 10)

15 Documents also obtained from the office of Judge Anderson indicate that there was never any formal inquiry about the records from the Planned Parenthood case prosecutor, Johnson County District Attorney Steve Howe, or from Shawnee County District Attorney Chad Taylor, who was tasked in November, 2011, with determining who was responsible for the destruction of the supposed final copy of the records that were the basis for 49 out of 107 total criminal charges against Planned Parenthood, including 28 felonies. (See Attachment 11)

16 This is evidence that proves that the 49 charges dismissed in November, 2011, at the request of Howe were dropped under false pretenses two months before Anderson moved and sealed the remaining records. It further indicates the possibly the dismissal was the result of a wide-spread criminal conspiracy to obstruct justice.

17 The existence of the records completely refutes statements made by Howe in court on November 9, 2011. There, Howe told District Court Judge Stephen Tatum that the last remaining copies of Termination of Pregnancy reports that were crucial evidence in proving that Planned Parenthood forged records to cover for other crimes had been destroyed by former Attorney General Steve Six in 2009.

18 According to hearing transcripts, Howe told Judge Tatum in court:

"The copies that were destroyed by the AG was the last complete copy of the KDHE T.O.P. records." (See Attachment 5)

19 Howe's representation that the "last complete copy" of the evidence had been destroyed was patently false, and he was aware of it at the time he said it. This intentional lie to Judge Tatum thwarted justice and destroyed the case that no fewer than three Kansas judges agreed that there was probable cause that Planned Parenthood committed the crimes that Howe just persuaded Judge Tatum to dismiss.

20 Howe told the court he needed the originals or original copies to authenticate the copies in his possession, which were the last surviving copies. Since his copies could not be authenticated, Howe asked Tatum to dismiss the 49 counts related to manufacturing evidence.

21 Howe had previously indicated that the Kansas Department of Health and Environment, which had provided copies to former Attorney General Phill Kline in response to a subpoena in 2004, had destroyed the originals in 2005.

22 However, the existence of the records was clearly documented in multiple court records, including the Kansas Supreme Court Ruling, particularly on pgs. 20-23, issued in October, 2010, that remanded the case back to Howe for further prosecution. (See Attachment 3)

23 There is a clear record that Judge Richard Anderson had possession of the original copies of the KDHE T.O.P. records obtained by Kline under subpoena since November 4, 2005, when Anderson told Kline to make a copy of the records so the original copy could be held by Anderson.

24 Anderson testified at a hearing held before Judge Tatum on January 18, 2008, that he had concerns that the T.O.P. forms from KDHE and the copies in the Planned Parenthood patient files were not true copies of each other. Anderson had a handwriting expert with the Shawnee County Sheriff's office examine

the records. It was determined that the records that were copied in two different hands. (See Attachment 3)

25 This was strong evidence that Planned Parenthood created the records at a later date and put them into the patient file to make it look like they had been there all along since it is a misdemeanor not to keep a copy of the KDHE form in the patient's file. In doing so, those records could prove that Planned Parenthood committed a felony to cover up for a misdemeanor.

26 I found independent evidence that is was the case through an open records request made to KDHE on October 26, 2011. (See Attachment 12) The records obtained through that request show that on August 10, 2005, Planned Parenthood's Sheila Kostas made an E-mail request for information on all the T.O.P. forms submitted by their organization for the years 2000-2004. The Kansas Supreme Court was set to hear oral arguments just a few weeks later on September 5, 2005, concerning whether Planned Parenthood and abortionist George Tiller would have to comply with subpoenas for patient records.

27 That production of documents included E-mails showing that KDHE's Greg Crawford complied with Kosta's request the following day. Information supplied by Crawford could have easily been used by Planned Parenthood to create the bogus T.O.P. forms in the event the Supreme Court ordered them to turn over their records.

28 Anderson said he had informed then-Assistant Attorney General Veronica Dersch that there was a problem with the T.O.P. records. She then reported back to her boss, former Attorney General Paul Morrison, who had defeated Kline as Attorney General in 2006 with the promise that he would end Kline's abortion investigation.

Anderson further testified:

29 Very quickly after that, Mr. Morrison declared that he was not going to do any further investigation of [CHPP], closed the investigation and represented publicly that there was no evidence of wrong doing [sic]. A few days after that he filed a motion to return the records of [CHPP] to [CHPP].

Before I had an opportunity to even rule on that, I – Mr. Irigonegaray [CHPP's attorney] came to my office, expecting to pick up the records. I said, 'Well, there's a problem with the record.' And he looked confused. And I said, 'Let me show you.' And I showed three records and I said, 'These look like they are the same record and until this gets cleared up I am just going to sit tight on the records.' Mr. Irigonegaray left the office without the records. And then in a few days, it was probably two or three weeks later, Attorney General Morrison filed a mandamus action against me to try to disgorge me of the records.

I had notified everyone that there was a questioned record. I had written a letter and . . . distributed it to Mr. Kline, Mr. Morrison, the disciplinary administrator, the Supreme Court Chief Justice and said there's a problem with these records[.] I am going to sit tight. And I sat down like an old mule and just was going to sit on that until everything was cleared up. (See Attachment 3)

And sit on them he did, but everything is still far from cleared up.

30 Anderson won the mandamus action and did not return the records to Planned Parenthood. Morrison later became embroiled in a sex and abortion corruption scandal (See Attachment 13) where it was revealed that he had attempted to use his mistress in the District Attorney's office to spy on Kline's case against Planned Parenthood for the purpose of subverting Kline's efforts to prosecute them. Morrison was forced to resign in disgrace and was replaced by Steve Six, an appointee of the radical pro-abortion former Gov. Kathleen Sebelius. Six sought and received a gag order on Judge Anderson to keep him from testifying at any further hearings and to ensure that the evidence against Planned Parenthood never saw the light of day. He was later accused of destroying the copy of the T.O.P records that were in the custody of the Attorney General's office on April 7, 2009. [*Pg 4. Hearing Transcript 2*]

31 As long as those records existed, Planned Parenthood remained under the real threat of felony criminal convictions for falsifying records to cover for other crimes. This could have jeopardized over \$300 million in Federal tax grants that flow to Planned Parenthood organizations every year under the condition that they obey all state and federal laws.

32 In November, 2011, Attorney General Derek Schmidt asked Shawnee County District Attorney Chad Taylor to conduct an investigation into the Sebelius Administration's destruction of evidence by Attorney General Steve Six and find out what happened to the records.

33 Taylor did neither. In February of this year, Taylor's investigation concluded that records destroyed under Sebelius' man Steve Six on April 7, 2009, did not pertain to Planned Parenthood. Even though evidence of felonies was destroyed while the criminal case was still active, no one was to blame. Case closed – or so he thought. The implication was that the evidence Howe and Schmidt said was destroyed was still secretly in the custody of Schmidt's office.

34 It was suspected that Howe would ask for the remainder of the charges to be dropped at a scheduled hearing on August 20, 2012.

35 This led me to revisit the convoluted issue of destruction of records. I made an open records request directly to Judge Anderson on August 6, 2012, asking for documentation indicating whether Anderson still had the heavily redacted Planned Parenthood abortion patient records and copies of the T.O.P. reports obtained from KDHE by Kline.

36 Anderson denied that request in writing on August 14, 2012, stating that the records were not required to be disclosed "because, to the extent any documents exist, Judge Anderson issued a Protective Order in Shawnee County Case No. 04-IQ-3 on January 12, 2012, which placed the records in the custody of the Clerk of the Court of the Third Judicial District and sealed these records until further order of the court."

37 In the middle of what amounted to a non-investigation by Taylor, Anderson had created a new document telling the world that the records exist, where they are, and who controls them.

38 I also requested any documentation of communications between Anderson and Taylor or Howe related to the records in question.

39 Again, Anderson's denial was informative. The records request was denied, but the denial explained that "a search was conducted and no documents were found to exist that match the description stated in these requests."

40

So according to Anderson, neither Taylor nor Howe had made any formal request concerning the existence of the records in Anderson's possession that would leave a record of their inquiry, even though there were records galore indicating that Anderson still controlled them. [See Attachment 11]

41

I placed a new open records request by E-mail the next morning for the Protective Order issued by Anderson on January 12, 2012. Within two hours, the Protective Order was in my Inbox. It was obvious that Anderson wanted the world to know that "last complete copy" of the evidence against Planned Parenthood that Howe said had been destroyed, was available all along under Anderson's diligent protection. There is no evidence that anyone had ever bothered to ask him for it.

42

The documents obtained from Judge Anderson provide the final puzzle piece that reveals a conspiracy between Planned Parenthood, Sebelius Administration associates Paul Morrison and Steve Six, and District Attorneys Howe and Taylor, to obstruct justice and ensure that Planned Parenthood was never fully prosecuted for the 107 crimes filed by District Attorney Phill Kline after a lengthy investigation that originated in 2003 during Kline's tenure as Attorney General.

43

Implicated in the conspiracy is former Gov. Kathleen Sebelius, who now serves as Secretary of Health and Human Services in the Obama Administration, who was so friendly with late-term abortionist George Tiller that she invited his entire abortion clinic staff to a dinner party at the Governor's Mansion in April, 2007, at tax-payer expense, according to documentation acquired by Operation Rescue that has never been disproven. She was so friendly with Planned Parenthood that the abortion group threw her a birthday party on May 15, 2007, where Planned Parenthood CEO Peter Brownlie danced the conga line with her in celebration. All this took place while both abortion providers were under criminal investigation.

44

Sebelius personally chose Morrison to run against Kline for Attorney General, after which Morrison's corruption was dramatically exposed. Sebelius again hand-picked Morrison's successor, Steve Six, who picked up where Morrison left off, joining with Planned Parenthood to silence Anderson and thwart Kline's prosecution. There can be no doubt that their actions reflected Sebelius' own abortion-related objectives and views.

Howe's personal and political vendetta interfering with his professional duties

45

Howe was a long-time employee and friend of Morrison's and was extremely loyal to him. When Kline assumed his post as Johnson County District Attorney after losing a contentious political campaign for re-election to the office of Attorney General to Morrison, Kline fired Howe as part of a change in administration. Howe sued Kline for wrongful termination, a case that was lost by Howe. It is clear that Howe disliked Kline and had reason to be vindictive toward him. This hatred of Kline is motivation for Howe to scuttle the last remaining effort by Kline to prosecute Planned Parenthood, something his former boss and friend, Morrison, had attempted to do to the destruction of his political career. With the dismissal of Kline's case against Planned Parenthood, Howe finally accomplished Morrison's goal.

46

Morrison, Six, Howe, and Taylor, all worked to either blatantly destroy evidence of Planned Parenthood's crimes, disgorge evidence from their custodians so it could be destroyed, or lied about the existence of evidence that was beyond their ability to destroy.

47

Schmidt had access to all the investigative records that indicated Anderson retained original copies of the Planned Parenthood evidence. He never mentioned it. In fact, Planned Parenthood's attorney Pedro

Irigonegaray said in an Associated Press article published on February 18, 2012, that the records that Howe said were destroyed by Six were seen by him in Attorney General Schmidt's office last fall. (See Attachment 14)

48

Schmidt at the least, allowed everyone to believe Howe's misinformation that the last complete copy of the records was destroyed. At worst, Schmidt was covering up the evidence through misdirection.

Specific Violations of the Kansas Rules of Professional Conduct

49

Below are alleged violations of the Kansas Rules of Professional Conduct. This list does not preclude the possibility that other rules were also violated. A full and impartial investigation is requested to determine the violations that may have actually occurred.

Lack of Thoroughness and Preparation

Rule 226(1.5)

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

50

Howe failed to adequately prepare for a competent prosecution of *Kansas v. Comprehensive Health of Planned Parenthood* in the following ways:

- Howe failed to determine or (more likely) blatantly ignored the fact that Anderson had evidence in his possession that made the case against CHPP prosecutable. There is no evidence that Howe sought the records in Anderson's possession. In the least, Howe failed to do adequate preparation for the case, particularly in regard to the first group of 49 charges that were dismissed at his request on November 9, 2011.
- Howe showed that he failed to do adequate research on Kansas law when he stated in the August 17, 2012, press statement that "There were no facts which would toll the Statute of Limitations." *Robinson v. Shah* was one clear case that indicates the statute can be tolled if deception is involved. If I, a non-attorney, could locate this case law, why couldn't Howe? Again Howe either failed to prepare or intentionally disregarded case law in a deceptive attempt to pretend he could not prosecute.
- Howe showed he failed to prepare for the case by failing to get testimony from an expert witness, who later suffered a stroke and was unable to testify. Howe could have used a video deposition to get the witness' testimony before the court, but he did not. He could have obtained another expert witness, but he did not. Instead, Howe relied on outdated statistics from the 1970s to indicate the pre-born babies aborted by CHPP that were subject to this case were not viable by definition. This ignores almost 40 years of advances in the study of fetology that indicate viability at 22 weeks gestation or more is likely.
- Howe also failed to competently prepare for the case by using case law from the 1970s to state in his August 17, 2012, press release, "The United States Supreme Court has said that reasonable medical debate should not subject individuals to criminal prosecution." That legal theory is outdated. The controlling authority in this case would actually be *Gonzales v. Carhart*,

A

B

C

D

550 U.S. 124, 164 (2007), which states in part: "Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts."

Lack of Diligence

Rule 226(1.3.1)

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately.

51

Howe inadequately pursued justice on behalf of his clients, the People of Kansas, by using deceptive reasoning and blatant falsehoods to persuade a District Court Judge to dismiss *Kansas v. Comprehensive Health of Planned Parenthood*, even though the case was entirely prosecutable, as determined by three separate Kansas judges.

Lack of Candor Toward the Tribunal

Rule 226(3.3)

Advocate:

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

52

A

Howe made false statements to Judge Stephen Tatum on October 24, 2011 and on November 9, 2011, when he misrepresented the facts by stating that "last complete copy" of the evidence had been destroyed when the record was clear that Judge Richard Anderson maintained pristine copies of the evidence.

B

Howe failed to disclose proper case law (*Robinson v. Shah*, 1997) regarding tolling the statute of limitations in the case that deception is present.

C

Howe misrepresented the controlling authority regarding "reasonable medical debate" when he stated in his August 17, 2012, press release that, "The United States Supreme Court has said that reasonable medical debate should not subject individuals to criminal prosecution."

D

Howe concealed the fact that the true controlling authority on this legal topic is *Gonzales v. Carhart*, 550 U.S. 124, 164 (2007), which states in part: "Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts."

Fairness to Opposing Party and Counsel

Rule 226(3.4)

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

53

Howe concealed the fact that evidence needed for the prosecution of Planned Parenthood was in the custody of Judge Richard Anderson. Instead, he falsely represented that the evidence had been destroyed. While there is some indication that Planned Parenthood's attorneys were aware that the Anderson records existed, Howe nevertheless perpetrated the fraud in open court.

Transactions with Persons other than Clients: Truthfulness in Statements to Others

Rule 226(4.1)

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or
(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by or made discretionary under Rule 1.6.

54

Howe and Schmidt's press statement issued on August 17, 2012, is full of false statements of material fact and law, as already discussed in the narrative above. The public, including the people of Kansas who Howe is supposed to represent, do not deserve to be lied to in this manner.

Maintaining the Integrity of the Profession: Misconduct

Rule 226(8.4)

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official;
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

55

During the incompetent prosecution of CHPP, Howe committed misconduct when he perjured himself in his statements to Judge Tatum that indicated all the copies he needed to authenticate his evidence had been destroyed. His entire representation of the lack of evidence or controlling authorities in this case was fraudulent. His deceptive claims in court concerning the evidence and the controlling authorities thwarted justice. Because of this, he is not fit for the continued practice of law.

Request to Protect the Record

56 I am specifically asking for the Disciplinary Administrator's office to seek an immediate protective order on the following evidence in order to protect the record for this complaint and others that are expected to follow it:

- Documents listed on Anderson's January 12, 2012 Protective Order that are currently in the custody of the Shawnee County Clerk of the Court.
- Evidence in the Kansas v. PPCH case in the custody of the Johnson County District Attorney's office.
- Evidence gathered in Case no. 04-IQ-3 that is currently in the custody of the Attorney General's office.

Request for Disciplinary Action

57 We demand that Steve Howe be properly disciplined up to and including disbarment for his acts of professional misconduct, blatant lying to the court, failing to competently prosecute a case that justice itself demanded should be prosecuted, and other violations alleged in this complaint.

Additional Attachments:

15. *Kansas v. Comprehensive Health of Planned Parenthood* Case History from www.jococourts.org.
16. 1 set of Termination of Pregnancy report copies (one from a CHPP abortion file and the other from KDHE for the same abortion.)
17. Chart illustrating the location of all copies of the evidence in question prepared by Cheryl Sullenger for Operation Rescue.