

Complaint Narrative

Background

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.

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).

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.

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.

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*.

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. [\(See Attachment 3\)](#)

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. [\(See Attachment 4\)](#)

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. [\(See Attachment 5\)](#)

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.

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. [\(See Attachment 7\)](#)

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." [\(See Attachment 8\)](#)

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." [\(See Attachment 9\)](#)

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

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. [\(See Attachment 10\)](#)

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. [\(See Attachment 11\)](#)

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.

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.

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.” [\(See Attachment 5\)](#)

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.

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.

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.

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. [\(See Attachment 3\)](#)

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.

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. [\(See Attachment 3\)](#)

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.

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.

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.

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:

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.

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. [\[Pg 4. Hearing Transcript 2\]](#)

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.

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.

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.

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

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.

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."

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.

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

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."

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]**

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.

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.

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.

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

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.

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.

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. [\(See Attachment 14\)](#)

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

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.

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*,

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.

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;

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.

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

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."

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;

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.

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.

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

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

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.