

FILED

Jan 30, 2023

**Disciplinary
Board**

Docket # 083

**DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION**

In re

**TROY XAVIER KELLEY,
Lawyer (Bar No. 30998).**

Proceeding No. 17#00093

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND HEARING OFFICER'S
SANCTION RECOMMENDATION**

SUMMARY

This disciplinary proceeding was heard by Hearing Officer Henry E. Stiles, II, on November 8, 2022, under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Troy Xavier Kelley appeared at the hearing. Disciplinary Counsel Amanda Lee appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

Based on applicable case law from the Washington Supreme Court interpreting and enforcing ELC 10.14(c), and as explained in more detail below, the Hearing Officer concludes that he has no discretion other than to recommend Respondent be disbarred following Respondent's eight federal felony convictions in 2017, and exhaustion of direct appeals, for

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1 possession and concealment of stolen property, making false material declarations, and filing
2 false income tax returns. There are no mitigating circumstances that would justify a reduction in
3 the presumptive disbarment sanction.

4 **SECOND AMENDED FORMAL COMPLAINT**

5 The Second Amended Formal Complaint filed by Disciplinary Counsel charged
6 Respondent with the following counts of misconduct: ¹

7 **Count 1:** By committing the crime of possession and concealment of stolen property, as
8 charged in Count 1 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by
9 violating 18 U.S.C. § 2315), RPC 8.4(c), and/or RPC 8.4(i).

10 **Count 2:** By committing the crime of false declaration, as charged in Count 2 of the
11 Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 18 U.S.C. § 1623(a)),
12 RPC 8.4(c), and/or RPC 8.4(i).

13 **Count 3:** By committing the crime of false declaration, as charged in Count 5 of the
14 Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 18 U.S.C. § 1623(a)),
15 RPC 8.4(c), and/or RPC 8.4(i).

16 **Count 4:** By committing the crime of filing a false income tax return, as charged in
17 Count 12 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 26
18 U.S.C. § 7206(1)), RPC 8.4(c), and/or RPC 8.4(i).

19
20
21 ¹ The Association in this disciplinary proceeding organizes the alleged acts of misconduct as, 'Counts;' the U.S. Attorney in the federal criminal proceeding which is the foundation for this disciplinary action
22 organizes the alleged criminal conduct using the same 'Counts' term. The Hearing Officer herein is
23 using the same terms, although it may be confusing as misconduct Count 1 is different that criminal
conduct Count 1.

1 **Count 5:** By committing the crime of filing a false income tax return, as charged in
2 Count 13 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 26
3 U.S.C. § 7206(1)), RPC 8.4(c), and/or RPC 8.4(i).

4 **Count 6:** By committing the crime of filing a false income tax return, as charged in
5 Count 14 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 26
6 U.S.C. § 7206(1)), RPC 8.4(c), and/or RPC 8.4(i).

7 **Count 7:** By committing the crime of filing a false income tax return, as charged in
8 Count 15 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 26
9 U.S.C. § 7206(1)), RPC 8.4(c), and/or RPC 8.4(i).

10 **Count 8:** By committing the crime of filing a false income tax return, as charged in
11 Count 17 of the Superseding Indictment, Respondent violated RPC 8.4(b) (by violating 26
12 U.S.C. § 7206(1)), RPC 8.4(c), and/or RPC 8.4(i).

13 The Hearing Officer considered the pleadings in the record, the testimony of Colonel
14 Matthew Cooper, the exhibits that were admitted into evidence, the written and oral arguments
15 of Disciplinary Counsel, the oral argument of Respondent, and the post-hearing written
16 arguments of Respondent. Based on the pleadings, testimony, exhibits, and arguments, the
17 Hearing Officer makes the following:

18 **FINDINGS OF FACT**

19 **Professional and Service History**

20 1. Respondent was admitted to the practice of law in the State of Washington on April
21 25, 2001. Answer to Second Amended Formal Complaint, Bar File (BF) 51 ¶ 1.

22 2. Respondent has no prior disciplinary record.

1 3. There is no evidence in the record whether Respondent engaged in the practice of
2 law during the time Respondent's license was active in Washington.

3 4. ODC's records reflect that Respondent was admitted to the practice of law in three
4 other states: New York (admitted on May 21, 1996); California (admitted on June 11, 1990);
5 and the District of Columbia (admitted on April 1, 1990). EX 107, ¶¶5-7.

6 5. Respondent served three terms in the Washington State House of Representatives
7 and one term as Washington State Auditor commencing in 2012.

8 6. Respondent also served 28 years in the military, retiring with an honorable discharge
9 as a lieutenant colonel in the Washington National Guard.

10 7. Respondent has been an enrolled tax preparer with the Internal Revenue Service and
11 currently has a Preparer Tax Identification Number (PTIN) for calendar year 2022. On
12 November 6, 2022, the IRS renewed Respondent's PTIN for calendar year 2023. EX R-103.

13 **Federal Criminal Indictment**

14 8. On September 3, 2015, the United States Attorney for the Western District of
15 Washington filed a Superseding Indictment charging Respondent with one count of possession
16 and concealment of stolen property under 18 U.S.C. § 2315 (Count 1), five counts of making
17 false material declarations under 18 U.S.C. § 1623(a) (Counts 2-5 and 16), five counts of money
18 laundering under 18 U.S.C. § 1956(a)(1)(B)(i) and (2) (Counts 6-10), one count of corrupt
19 interference with internal revenue laws under 26 U.S.C. § 7212(a) (Count 11), and five counts
20 of filing false income tax return under 26 U.S.C. § 7206(1) (Counts 12-15 and 17). EX A-101 at
21 30-46, all as described in more detail below.

Count 1

9. The Superseding Indictment, Count 1, charged Respondent with possession and concealment of stolen property, specifically money, between approximately June 2008 and approximately January 2012. EX A-101 ¶¶ 104-105.

10. Possession and concealment of stolen property is a felony under 18 U.S.C. § 3559.

11. The elements of possession and concealment of stolen property are (1) the defendant possessed or concealed property, specifically money, that had crossed a state line after having been stolen, (2) at the time the defendant did so the defendant knew the property had been stolen, and (3) the total amount of money was \$5,000 or more. EX A-101 ¶¶ 104-105.

12. On December 20, 2017, a jury convicted Respondent of possession and concealment of stolen property as charged in Count 1 of the Superseding Indictment. EX A-102 at 1.

Counts 2 and 5

13. The Superseding Indictment, Counts 2 and 5, charged Respondent with making false declarations in violation of 18 U.S.C. § 1623(a) on or about August 2, 2010, while testifying in a civil deposition. EX A-101 ¶¶ 106-110, 121-125.

14. False declaration is a felony under 18 U.S.C. § 3559.

15. The elements of false declaration are that (1) the defendant testified under oath in or ancillary to a court proceeding, (2) the testimony was false, (3) the defendant knew the testimony was false, and (4) the false testimony was material to the matters before the court; that is, it had a natural tendency to influence, or was capable of influencing, the court. EX A-101 ¶¶ 106-110, 121-125.

16. On December 20, 2017, a jury convicted Respondent of false declaration as charged in Counts 2 and 5 of the Superseding Indictment. EX A-102 at 2.

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Count 11

17. The Superseding Indictment, Count 11, charged Respondent with corrupt interference with internal revenue laws under 26 U.S.C. § 7212(a). EX A-101 ¶¶ 136-144.

18. Corrupt interference with internal revenue laws is a felony under 18 U.S.C. § 3559.

19. On December 20, 2017, a jury convicted Respondent of corrupt interference with internal revenue laws as charged in Count 11. EX A-102 at 3.

20. On May 15, 2018, the district court granted Respondent's motion to dismiss Count 11 of the Superseding Indictment. EX A-103.

Counts 12, 13, 14, 15, and 17

21. The Superseding Indictment, Counts 12, 13, 14, 15, and 17 charged Respondent with filing false income tax returns on or about October 9, 2008 (Count 12), March 31, 2009 (Count 13), February 28, 2012 (Count 14), February 2, 2013 (Count 15), and February 27, 2014 (Count 17), in violation of 26 U.S.C. § 7206(1). EX A-101 ¶¶ 145-146, 147-148, 149-150, 151-152, and 155-156.

22. Filing a false income tax return is a felony under 18 U.S.C. § 3559.

23. The elements of filing a false income tax return are (1) the defendant signed and filed a tax return the defendant knew contained false information as to a material matter, (2) the return contained a written declaration that it was being signed subject to the penalties of perjury, and (3) in filing the false tax return, the defendant acted willfully. EX A-101 ¶¶ 145-146, 147-148, 149-150, 151-152, and 155-156.

24. On December 20, 2017, a jury convicted Respondent of filing a false income tax returns as charged in Counts 12, 13, 14, 15, and 17 of the Superseding Indictment. EX A-102 at 3-4.

1 **Washington Bar License Suspended**

2 25. Based on the jury's conviction of Respondent of the charges described above, on
3 January 26, 2018, the Washington Supreme Court entered an order suspending Respondent
4 from the practice of law under ELC 7.1 pending the disposition of disciplinary proceedings.
5 Order of Interim Suspension, In re: Troy Xavier Kelley, No. 201,718-5 (Jan. 26, 2018).

6 **Prison; Supervised Release; Restitution**

7 26. The federal district court entered an amended judgment on September 21, 2018,
8 imposing on Respondent a prison term of one year and one day, to be followed by a term of
9 supervised release of one year, and restitution in the amount of \$31,144. EX A-103.

10 **Appeals of Convictions Affirmed**

11 27. On July 29, 2020, the United States Court of Appeals for the Ninth Circuit affirmed
12 Respondent's convictions. EX A-104.

13 28. On March 22, 2021, the United States Supreme Court denied Respondent's petition
14 for a writ of certiorari. EX A-105 at 1, 6. EX A-105.

15 29. During the hearing Respondent acknowledged and did not dispute the history of the
16 federal convictions or the exhaustion of direct appeals of those convictions.

17 **Respondent's Character**

18 30. Colonel Matthew Cooper testified as a character witness for Respondent.

19 31. Col. Cooper is a licensed attorney in several states and previously served on active
20 duty as a judge advocate with the United States Army. Through 2019 he was a full-time legal
21 advisor to the Adjutant General of the State of Washington, and to the Washington Army and
22 Air National Guard Commanders. He currently is assigned to the National Guard Bureau
23 headquarters at the Pentagon, based at Camp Murray, Washington. TR 19, 20.

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1 32. Col. Cooper departed full-time active military service for a short time during the
2 2009 legislative session when he was employed as a non-partisan staff member in the
3 Washington House of Representatives Office of Program Research. Col. Cooper met
4 Respondent that year when Respondent was serving in the House of Representatives. After that
5 employment, Col. Cooper returned to full-time military service.

6 33. Col. Cooper worked with Respondent to propose changes to the Washington Code of
7 Military Justice. In their professional relationship, they met once a month on weekends on a
8 regular basis and on some occasions between weekends. They also had some social interactions
9 with each other's families. Their personal relationship has continued to the present time,
10 although they had no personal contact while Respondent was incarcerated. TR 26-27.

11 34. Col. Cooper was in the chain of command with respect to travel orders for the
12 military reserve. In that capacity, Col. Cooper approved Respondent's travel to Korea in 2011,
13 2013, 2014, and 2017. In order to reduce expenses for the military, Respondent turned down the
14 option of taking commercial air flights, and did not seek reimbursement from the military for all
15 expenses that Respondent would otherwise have been entitled to request.

16 35. Col. Cooper was familiar with Respondent's service for two terms as an instructor at
17 the Army Judge Advocate General School where Respondent taught security, international law,
18 and ethics to JAG attorneys. Col. Cooper said it was the most prestigious assignment in the
19 Army JAG corps, very difficult to get, and did not know anyone else who had the same
20 assignment back to back. TR 83-84.

21 36. Col. Cooper was familiar with Respondent's military security clearances. Following
22 an investigation completed in January, 2019, the Army granted Respondent Top Secret with
23

1 Sensitive Compartmented Information clearance in 2020, a classification that few lawyers have.
2 TR 42.

3 37. Col. Cooper observed that Respondent was professional and straightforward
4 regardless of whether Col. Cooper was senior or junior in rank to Respondent, or whether
5 Respondent was senior or junior in rank to Col. Cooper.

6 38. Col. Cooper said that the 28 years Respondent served in the military, including post-
7 conviction time, was the maximum term that a lieutenant colonel could serve. TR 27-28, 83.

8 39. Col. Cooper observed Respondent in a number of different capacities: as a policy-
9 maker in the state legislature; as the state Auditor; as an attorney; as an Army officer; and when
10 interacting socially with others. Col. Cooper said that Respondent provided great service to the
11 soldiers of the Washington National Guard. Based on his experiences with Respondent, Col.
12 Cooper believes Respondent to be honest, trustworthy, true to his word, unselfish, and that
13 Respondent has high moral and ethical standards. TR 28-29.

14 40. Col. Cooper is aware of the circumstances of Respondent's convictions. Col. Cooper
15 described Respondent as holding up well, and coming out of it changed but wiser and better in
16 some respects. Col. Cooper continues to hold a very high opinion of Respondent following the
17 convictions. In Col. Cooper's opinion, Respondent is fit to be a lawyer should he be permitted
18 to resume the practice of law. TR 32-34.

19 CONCLUSIONS OF LAW

20 Violations Analysis

21 41. Respondent's convictions of the offenses of possession and concealment of stolen
22 property, making false declarations, and filing false income tax returns, establish by a clear
23 preponderance of the evidence misconduct as alleged in Counts 1 through 8 of violations of

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1 RPC 8.4(b), 8.4(c), and 8.4(i).

2 42. Under ELC 10.14(c), the court record of Respondent's convictions of the offenses of
3 possession and concealment of stolen property, making false declarations and filing false
4 income tax returns is conclusive evidence of Respondent's guilt of those crimes and violation of
5 the statutes on which the conviction was based.

6 43. Under RPC 8.4(b) it is misconduct for a lawyer to commit a criminal act that reflects
7 adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. In re
8 Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 766, 801 P.2d 962 (1990).

9 44. Respondent's felony convictions of the offenses of possession and concealment of
10 stolen property, making false declarations, and filing false income tax returns, are all serious
11 criminal offenses that include elements of false swearing, misrepresentation, fraud,
12 misappropriation, or theft, reflecting adversely on Respondent's honesty, trustworthiness, and
13 fitness as a lawyer.

14 45. A lawyer may be sanctioned under RPC 8.4(b) for misconduct that occurs outside
15 the practice of law, provided there is some nexus between the lawyer's conduct and those
16 characteristics relevant to law practice. In re Disciplinary Proceeding Against Plumb, 126
17 Wn.2d 334, 341, 892 P.2d 739 (1995) (quoting In re Disciplinary Proceeding Against Curran,
18 115 Wn.2d 747, 768, 801 P.2d 962 (1990)).

19 46. Under RPC 8.4(c) it is misconduct for a lawyer to engage in conduct involving
20 dishonesty, fraud, deceit or misrepresentation.

21 47. Under RPC 8.4(i) it is misconduct for a lawyer to commit any act involving moral
22 turpitude or corruption, or other act which reflects disregard for the rule of law, whether the act
23 is committed inside or outside the practice of law.

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Count 1

48. By committing the felony offense of possession and concealment of stolen property, Respondent violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(i).

49. By committing the crime of possession and concealment of stolen property Respondent engaged in a criminal act that reflects adversely on the Respondent's honesty, trustworthiness or fitness as a lawyer in other respects, in violation of RPC 8.4(b).

50. By committing the crime of possession and concealment of stolen property, Respondent engaged in conduct involving dishonesty and deceit, in violation of RPC 8.4(c),

51. By committing the crime of possession and concealment of stolen property, Respondent committed an act that reflects disregard for the rule of law, in violation of RPC 8.4(i).

Counts 2 and 3

52. By committing two counts of the felony offense of false declaration, Respondent violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(i).

53. False swearing is a crime of dishonesty. In re Disciplinary Proceeding Against Rodriguez, 177 Wn.2d 872, 889, 306 P.3d 893 (2013).

54. By committing the crimes of false declaration, Respondent engaged in conduct that reflects adversely on Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of RPC 8.4(b).

55. By committing the crimes of false declaration, Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, in violation of RPC 8.4(c).

56. By committing the crimes of false declaration, Respondent committed acts that reflect disregard for the rule of law, in violation of RPC 8.4(i).

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Counts 4 – 8

57. By committing five counts of the felony offense of filing false income tax returns, Respondent violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(i).

58. The crime of filing false income tax returns includes both an element of knowledge that the returns contained false information and an element of acting “willfully” in filing the false tax returns. In the context of criminal tax violations, willfulness is defined as a voluntary, intentional violation of a known legal duty. United States v. Powell, 955 F.2d 1206, 1210 (9th Cir. 1992) (quoting Cheek v. United States, 498 U.S. 192, 200 (1991)) (internal quotation marks omitted).

59. By committing the crimes of filing false income tax returns, Respondent engaged in conduct that reflects adversely on Respondent’s honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of RPC 8.4(b).

60. By committing the crimes of filing false income tax returns, Respondent engaged in conduct involving dishonesty, deceit, and misrepresentation, in violation of RPC 8.4(c).

61. By committing the crimes of filing false income tax returns, Respondent committed acts that reflect disregard for the rule of law, in violation of RPC 8.4(i).

Sanction Analysis

62. A presumptive sanction must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003).

63. The American Bar Association’s Standards for Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) govern lawyer sanctions in Washington. In re Cohen, 150 Wn.2d 744, 753, 82 P.2d 224 (2004).

1 64. In this case, ABA Standard 5.1 supplies the presumptive sanction because the case
2 involves the commission of criminal acts that reflect adversely on the lawyer's honesty,
3 trustworthiness, or fitness as a lawyer in other respects, and because the conduct involves
4 dishonesty, fraud, deceit, or misrepresentation.

5 65. Under ABA Standard 5.11 disbarment is generally appropriate when:

- 6 (a) a lawyer engages in serious criminal conduct, a necessary element of
7 which includes intentional interference with the administration of justice,
8 false swearing, misrepresentation, fraud, extortion, misappropriation, or
9 theft; . . . or solicitation of another to commit any of these offenses; or
10 (b) a lawyer engages in any other intentional conduct involving dishonesty,
11 fraud, deceit, or misrepresentation that seriously adversely reflects on the
12 lawyer's fitness to practice.

13 66. ABA Standards 5.11(a) and 5.11(b) apply to Count 1. Possession and concealment of
14 stolen property constitutes serious criminal conduct that involves an element of false swearing,
15 misrepresentation, fraud, misappropriation, or theft. Additionally, Respondent intentionally
16 possessed and concealed property that Respondent knew was stolen, which seriously adversely
17 reflects on Respondent's fitness to practice law.

18 67. ABA Standards 5.11(a) and 5.11(b) apply to Counts 2 and 3. Making false
19 statements under oath constitutes serious criminal conduct that involves an element of false
20 swearing, misrepresentation, fraud, misappropriation, or theft. See, e.g., In re Dynan, 152,
21 Wn.2d 601, 619, 98 P.3d 444 (2004). Additionally, Respondent's intentional conduct involved
22 dishonesty, deceit, and misrepresentation which seriously adversely reflects on Respondent's
23 fitness to practice law.

24 68. ABA Standards 5.11(a) and 5.11(b) apply to Counts 4-8. Filing a false income tax
return is a serious criminal offense that involves an element of false swearing,

1 misrepresentation, fraud, misappropriation, or theft. Additionally, Respondent acted "willfully,"
2 which means he intentionally and voluntarily violated a known legal duty. Respondent's
3 intentional conduct involved dishonesty, deceit and misrepresentation that seriously adversely
4 reflects on Respondent's fitness to practice law.

5 69. When multiple ethical violations are found, the "ultimate sanction imposed should at
6 least be consistent with the sanction for the most serious instance of misconduct among a
7 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993). In this case,
8 the presumptive sanction for each violation is disbarment.

9 70. Based on the above factual findings and legal conclusions and application of the
10 ABA Standards, the presumptive sanction is disbarment.

11 71. "Aggravation or aggravating circumstances are any considerations or factors that
12 may justify an increase in the degree of discipline to be imposed." ABA Standard 9.21. The
13 following aggravating factors set forth in ABA Standard 9.22 apply in this case:

14 72. Dishonest or selfish motive, ABA Standard 9.22(b): Respondent's criminal
15 convictions include possession and use of stolen property and filing false income tax returns.

16 73. Multiple offenses, ABA Standard 9.22(d): Respondent was convicted of eight
17 federal felonies, establishing multiple violations of RPC 8.4(b), (c), and (i).

18 74. Refusal to acknowledge wrongful nature of conduct, ABA Standard 9.22 (g):
19 Respondent has not acknowledged that the evidence which formed the basis for Respondent's
20 criminal convictions established any violations of the Washington Rules of Professional
21 Conduct.

22 75. Substantial experience in the practice of law, ABA Standard 9.22(i): This factor
23 applies but it not significant, considering that although Respondent was licensed as a lawyer in

1 Washington from 2001 until 2018, there was no evidence introduced to show that Respondent
2 had any experience practicing law in Washington from the time Respondent was licensed until
3 2018 when Respondent's license was suspended following the criminal convictions.

4 76. "Mitigation or mitigating circumstances are any considerations or factors that may
5 justify a reduction in the degree of discipline to be imposed." ABA Standard 9.31. The Hearing
6 Officer considered the following mitigating factors that may apply under ABA Standard 9.32:

7 77. Absence of a prior disciplinary record, ABA Standard 9.32(a): This factor applies
8 but is not significant. Respondent has no prior disciplinary history. However, a lawyer cannot
9 be shielded from the consequences of committing a serious ethical violation simply because it is
10 the lawyer's first offense. In re Schwimmer, 153 Wn.2d 752, 763, 108 P.3d 761 (2005).

11 78. Character or Reputation, ABA Standard 9.32(g): This factor applies, but does not
12 justify departure from the presumptive sanction of disbarment. Col. Cooper's credentials and his
13 opportunities for professional and social interactions and observations of Respondent were
14 extensive and impressive. Col. Cooper's interactions and observations of Respondent, however,
15 involved legislative and military activities in which both were involved, and were unrelated to
16 the conduct that was the foundation for Respondent's criminal convictions. See, e.g., TR 26-27,
17 28.

18 79. In addition, during closing argument, Respondent described certain activities that
19 were not introduced into evidence during the hearing. Even under the relaxed rules of evidence
20 in disciplinary proceedings, the Hearing Officer does not have the authority, in making his
21 decision, to consider information outside the hearing record. Moreover, had Respondent's
22 statements been introduced through sworn testimony, they would not have altered the Hearing
23 Officer's decision.

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1 80. The record is undisputed, especially based on the testimony of Col. Cooper, that
2 Respondent's public and military service has been admirable. However impressive
3 Respondent's character and life may have been (excluding the conduct that led to the
4 convictions), that history would not have been a defense to the criminal charges. Likewise,
5 Respondent's public and military service, before or after Respondent's conviction cannot be
6 considered a mitigator warranting departure from the presumptive sanction of disbarment.

7 81. Imposition of other penalties or sanctions, ABA Standard 9.32(k): This factor does
8 not apply. Respondent made non-testimonial statements during the hearing, and Col. Cooper
9 testified to some extent, about collateral consequences that Respondent and his family suffered
10 resulting from the filing of the criminal charges and the ultimate convictions, including
11 extensive negative media attention, attacks on Respondent's personal reputation, difficulty in
12 finding employment, and possibly even death threats.

13 82. Respondent said in closing argument that the federal government leaked its criminal
14 investigation to the media prior to filing an indictment, and that Respondent spent some time in
15 solitary confinement during his incarceration. Again, as noted above, the Hearing Officer does
16 not consider evidence outside the hearing record. However, his decision would not change had
17 that information been included in the record.

18 83. Disciplinary Counsel pointed out correctly that collateral consequences resulting
19 from criminal convictions, although terrible, are not unique to Respondent, and are not the type
20 of mitigating circumstances that may justify a reduction in sanctions to be imposed under the
21 ABA Standards. See, e.g., In re Vanderveen, 166 Wn.2d 594, 615, 211 P.3d 1008 (2009).

22 84. Respondent also argued against disbarment because Respondent has been interim
23 suspended for five years (since January 26, 2018). Respondent's interim suspension is not a

mitigating factor with respect to the presumptive sanction. However, under APR 25.1(b) and (c), Respondent should receive credit for this period of suspension should Respondent apply for reinstatement following disbarment.

85. There are insufficient mitigating factors to justify a reduction from the presumptive sanction of disbarment.

RECOMMENDED SANCTION

86. ELC 10.14(a) provides:

Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if a lawyer's conduct should have an impact on the lawyer's license to practice law.

87. Text from the ABA Standard 1.1 is instructive:

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged ... their professional duties to clients, the public, the legal system, and the legal profession.

88. Considering that under ELC 10.14(c) the convictions of the crimes are conclusive evidence of Respondent's guilt of those crimes, and violation of the statutes on which the convictions were based, and consequently are evidence of misconduct under RPC 8.4(b), (c), and (i), the Hearing Officer concludes that Respondent has violated his professional duties to the public, the legal system, and the legal profession.

89. The ABA Standards are designed, among other objectives, to promote,


...consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.

ABA Standard 1.3; In re Day, 162 Wn.2d 527, 537-38, 173 P.3d 915 (2007).

90. Based on applicable case law from the Washington Supreme Court interpreting and


1 enforcing ELC 10.14(c), and considering that this decision should be consistent with the
2 decisions in those cases, the Hearing Officer concludes that his discretion is limited and
3 therefore recommends that having been convicted of eight federal felonies for possession and
4 concealment of stolen property, making false material declarations, and filing false income tax
5 returns, and having exhausted direct appeals, Respondent Troy Xavier Kelley should be
6 disbarred. Vanderveen, 156 Wn.2d 594; In re Smith, 170 Wn.2d 721, 246 P.3d 1224 (2011).

7 Dated this 30th day of January, 2023.

8
9 
10 Henry E. Stiles, II, Bar No. 680
11 Hearing Officer
12 Lukins & Annis, P.S.
13 717 W. Sprague Ave.
14 Suite 1600
15 Spokane, WA 99201
16 509-623-2022 (direct)
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I certify that I caused a copy of the Findings of Fact, Conclusions of Law and Hearing Officer's Sanction Recommendation to be emailed to the Office of Disciplinary Counsel and to Respondent Troy Xavier Kelley, at troyxkelley@hotmail.com, on the 30th day of January, 2023.

A handwritten signature in blue ink, appearing to be 'M. S.', is written above a horizontal line.

Clerk to the Disciplinary Board