

MATTHEW H. ROANE

ATTORNEY AT LAW

March 25, 2013

Ms. Amy DeVan
Office of Attorney Regulation Counsel
1560 Broadway
Suite 1800
Denver, CO 80202

Re: Todd Starr

Dear Ms. DeVan:

I would likely to formally request that the Office of Attorney Regulation Counsel investigate certain actions undertaken by Archuleta County Attorney Todd M. Starr (Atty. Reg. No. 27641). I am troubled about various representations Mr. Starr made to the trial court in a recent case and fear they constitute violations of the Colorado Rules of Professional Conduct, Nos. 3.3 and 3.4. I base my concerns upon the following facts, all of which I have documented for your consideration:

- In 2010, I filed suit on behalf of William Hudson, a local journalist seeking disclosure of various records created by our local board of county commissioners. In his role as Archuleta County Attorney, Mr. Starr represented Clifford Lucero, the chairman of the board. (William Hudson v. Clifford Lucero, Archuleta County District Court, Case No. 2010CV259.)
- After 18 months of litigation, the trial court dismissed Mr. Hudson's claims. Although the trial court ruled that the records were public in nature, it held that Chairman Lucero was not a custodian of said records.
- On March 24, 2012, Mr. Starr filed a "Motion for Award of Costs" seeking reimbursement for various expenses his client allegedly incurred during the course of his defense. One specific expense was the cost of legal research services provided by Westlaw. (See Exhibit No. 1)
- In support of his motion, Mr. Starr attached transaction logs reflecting legal research activity undertaken in the case. (See Exhibit No. 2.) He represented to the trial court that the logs were "billing documentation from Westlaw reflecting research charges

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- incurred” (See p. 1, ¶ 3 of Exhibit No. 1.) The transaction logs totaled \$3329.76 which Mr. Starr moved the Court to award in favor of his client. (See p. 1, ¶ 3 of Exhibit No. 1.)
- I opposed the Motion for Award of Costs on behalf of Mr. Hudson. (See Exhibit No. 3.) As one of the grounds submitted in opposition to the legal research expenses, I questioned the seeming oddity of a government office paying for legal research services on a transactional basis. (See p. 2, fn. 3 of Exhibit No. 3.)
 - In his reply, Mr. Starr opted not to address my challenge concerning the odd nature of the Westlaw invoices. (See Exhibit No.4.) Instead, he simply reiterated that all documented expenses were “actually incurred”. (See p. 2 of Exhibit No. 4.)
 - The trial court thereafter awarded Mr. Starr’s client the full amount of requested expenses, specifically including the \$3329.76 in alleged Westlaw fees. (See Exhibit No. 5.)
 - Following the trial court’s ruling, I submitted an open-records request to the Archuleta County Attorney’s office. In the request, I asked to inspect all Westlaw contracts and invoices issued during the time period Hudson v. Lucero was pending. (See Exhibit No. 6.)
 - The Archuleta County Attorney’s staff dutifully complied with the request and produced two Westlaw service contracts, both signed by Mr. Starr personally. (See Exhibit No. 7.)
 - The staff also produced a stack of invoices, specifically including invoices for October/December of 2010, February/June/July of 2011, and March of 2012, the months Mr. Starr utilized Westlaw for research matters in Hudson v. Lucero. (See Exhibit No. 8.)
 - It was immediately apparent that the Westlaw invoices that the staff produced did not match the transaction logs Mr. Starr had previously submitted to the trial court. (Compare Exhibit Nos. 2 and 8.) The invoices differed from the transaction logs in appearance, billing methodology, and most importantly, total amounts charged.
 - The Westlaw contracts and the Westlaw invoices clearly evidenced that the Archuleta County Attorney’s office purchased its legal research services on a monthly, flat-rate basis. As long as the office stayed within the licensed libraries, it could conduct as much research, on as many different cases as it needed, for one fixed rate. (See Exhibit Nos. 7 & 8.)
 - During the months Mr. Starr researched issues in Hudson v. Lucero, his office paid Westlaw a total of \$1811.38 for its research needs in *all* its pending cases. (See Exhibit No. 8.) That amount was \$1518.38 less than Mr. Starr previously alleged was paid for research services needed in Hudson v. Lucero alone.



- On December 26, 2012, I filed “Plaintiff’s Motion for Post-Trial Relief” wherein I identified the discrepancy between the transaction logs submitted in support of the original Motion for Award of Costs and the actual Westlaw invoices produced in response to my open-records request. (See Exhibit No. 9.) Because Colorado law prohibits the award of legal research expenses incurred pursuant to a monthly, flat-rate plan, I asked the trial court to reverse its prior ruling.
- In response to the motion, Mr. Starr filed “Response to Plaintiff’s Motion for Post-Trial Relief Acknowledging Error”. (See Exhibit No. 10.) Therein, Mr. Starr admitted that “the Westlaw Statements submitted with the Defendant’s Bill of Costs do not reflect the actual amounts paid which actual amounts total \$1811.36”. (See p. 1, ¶ 1 of Exhibit No. 10.) Mr. Starr, however, still made no mention of the fact that the \$1811.36 represented the cost of research expended on all matters under his responsibility, rather than just Chairman Lucero’s case.
- On February 6, 2013, the trial court conducted a hearing on Plaintiff’s Motion for Post-Trial Relief. During the course of that proceeding, both parties stipulated that Archuleta County purchased its legal research services on a monthly, flat-rate basis. Nonetheless, Mr. Starr adamantly defended the trial court’s original award and defiantly demanded that it be affirmed in full. He made absolutely no concessions regarding a potential modification of the award.
- Despite the trial court’s assurance that it would rule on the matter before the statutory deadline to do so expired, it ultimately issued no opinion. (See Exhibit No. 11.) According to the court clerk, the judge had become unexpectedly incapacitated before he issued any ruling and was not expected to return to the bench until well after the deadline had expired. As a result, Plaintiff’s Motion for Post-Trial Relief was deemed denied as a matter of law. (See C.R.C.P. 59(j).)
- In the days after the expired deadline, the Pagosa Sun interviewed Mr. Starr about the motion for new trial and the transaction logs that sat at the center of the controversy. (See Exhibit No. 12.) In the article, Mr. Starr explained that the transaction logs reflected the fair-market value of the legal research services provided in the case. Admittedly, Mr. Starr had made a fleeting mention of this same theory at the prior hearing but offered no further explanation or legal authority in support thereof. The explanation appeared to be an afterthought as it contradicted his earlier admission that the transaction logs were submitted in error. (See Exhibit No. 10.)

The crux of my concern with Mr. Starr’s conduct in this case was his attempt to pass off transaction logs as “billing documentation from Westlaw reflecting research charges incurred.” Before he was caught, Mr. Starr never disclosed to the trial court that the transaction logs were anything other than actual invoices. He never disclosed that they represented the supposed fair market value of services provided, as opposed to real charges incurred and paid. If I had not investigated matters on my own, no one would have ever known that Chairman Lucero had *not* paid \$3329.76 in legal research fees, except of course, Mr. Starr and Chairman Lucero, one of whom would have enjoyed a nice financial windfall as a result of the deception.



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As my client now approaches the deadline to file his notice of appeal, he often asks me why I think a county attorney would misrepresent evidence to the court in the manner Mr. Starr did. Sadly, my answer always returns back to a personal vendetta. Mr. Hudson is a journalist who has been critical of our small town's government in the past. During the course of litigation, Mr. Starr disparaged Mr. Hudson and his journal to me in private meetings, calling the latter an "on-line rag". Knowing full-well the legal prohibition against awarding costs incurred as part of a monthly, flat-rate plan, I believe Mr. Starr submitted the transaction logs under the guise of invoices in an effort to skirt the prohibition and punish Mr. Hudson. I suspect he wanted Mr. Hudson to suffer a stiff financial penalty as the price of challenging the county commissioners and its attorney. A reimbursement payment in the amount of \$3,589.26 sure would sting a lot worse than a payment of only \$259.50 (the cost of all non-research related expenses). (See also Exhibit No. 13.)

Mr. Hudson is now faced with the daunting prospect of a costly appeal to insure he does not "reimburse" Chairman Lucero for expenses that he clearly never actually incurred. From a legal standpoint, I remain optimistic that Mr. Hudson will win that battle in the higher court. But from a financial standpoint, I am certain Mr. Starr and his client will win the war. One way or another, Mr. Hudson is going to pay very dearly as a result of his decision to challenge the county commissioners and its chief attorney. I bring this matter to your attention now in hopes that Mr. Starr's conduct can be addressed and corrected before other county residents suffer a similar fate in the future.

Sincerely,

Matthew H. Roane
Atty. Reg. No. 41018