

**BEFORE THE INDEPENDENT ETHICS COMMISSION  
STATE OF COLORADO**

**CASE NO's. 15-31, 15-32, 15-33, 15-34**

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**In the Matters of**

**TODD STARR, Archuleta County Attorney  
MICHAEL WHITING, Archuleta County Commissioner  
STEVE WADLEY, Archuleta County Commissioner  
CLIFFORD LUCERO, Archuleta County Commissioner**

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**CONSOLIDATED RESPONSE INCLUDING REQUEST FOR DISMISSAL BASED ON  
LACK OF JURISDICTION, REQUEST FOR SUMMARY JUDGMENT REGARDING  
C.R.S. § 24-18-201, AND REQUEST TO RECONSIDER FRIVOLOUSNESS**

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Respondents, Archuleta county attorney Todd Starr, County Commissioner Michael Whiting, County Commissioner Steven Wadley, and County Commissioner Clifford Lucero, in their official capacities, by counsel, respectfully submit this *Consolidated Response Including Request for Dismissal Based on Lack of Jurisdiction, Request for Summary Judgment Regarding C.R.S. § 24-18-201, And Request to Reconsider Frivolousness* pursuant to Rule 7(K)(2) of the Independent Ethics Commission (IEC) Rules of Procedure. Specifically, they respond herein to the Complaint filed by Mr. Greg Giehl on November 20, 2015 and combine a partial answer to the Complaint, a partial motion to dismiss, and a motion for summary judgment which includes a supporting affidavit.

## **PROCEDURAL HISTORY**

On November 20, 2015, Mr. Greg Giehl filed complaints with the IEC (hereinafter “the Complaint”) vaguely alleging that the Respondents engaged in a conspiracy to commit various criminal and other statutory violations. Generally, the Complaint alleges that Mr. Starr and the County Commissioners improperly entered into a contract for Mr. Starr to provide legal services to the County on a contract basis following his resignation as County Attorney.

## **FACTUAL BACKGROUND**

Mr. Starr served as the Archuleta County Attorney beginning on or about March 31, 2009. On or about September 21, 2015, he informed the County Commissioners of his resignation as County Attorney. The Board noted Mr. Starr’s resignation and the change in personnel during a meeting on September 22, 2016. Thereafter, on or about October 22, 2015, Mr. Starr became a partner in the national law firm of Rose Walker, operating in Colorado as Rose Walker Starr. The County Commissioners held a regular meeting on October 6, 2015 and in a public session, discussed the change in personnel and considered and agreed to a contract with Rose Walker Starr for continued legal services at such public session.

Following Mr. Starr’s resignation, the Archuleta County Board of Commissioners, as a cost-saving benefit for the County, entered into a contract with Mr. Starr for him to continue providing legal services to the County. The Board adopted the contract at the public meeting held on October 6, 2015, following public comment.

The Complaint alleges, or if it does not specifically allege, it alludes to, the following statutory violations:

1. Mr. Giehl alleges that the Respondents engaged in a conspiracy to commit

- violations of C.R.S. § 18-8-404(1)(a), (c) First Degree Official Misconduct.
2. Mr. Giehl alleges that the Respondents committed Embezzlement of Public Property in violation of C.R.S. § 18-8-407.
  3. Mr. Giehl alleges that Respondents committed Second Degree Official in violation of C.R.S. § 18-8-405(1)(b).
  4. Mr. Giehl alleges that, by not providing adequate notice of the September 22, 2015 meeting, the Respondents violated Colorado's Open Meetings Law codified at C.R.S. § 24-6-402.
  5. Mr. Giehl alleges that the Respondents violated C.R.S. § 24-18-201.

### **RESPONSE**

1. Respondents deny that there existed a conspiracy to commit violations of C.R.S. § 18-8-404(1)(a), (c) First Degree Official Misconduct.
2. Respondents deny that an Embezzlement of Public Property in violation of C.R.S. § 18-8-407 took place.
3. Respondents deny committing Second Degree Official Misconduct in violation of C.R.S. § 18-8-405(1)(b).
4. Respondents deny violating Colorado's Open Meetings Law codified at C.R.S. § 24-6-402.
5. Respondents deny violating C.R.S. § 24-18-201 (Interests in Contracts.)
6. Respondents admit that Mr. Starr served as Archuleta County Attorney.
7. Respondents admit that Mr. Starr resigned as Archuleta County Attorney.

8. Respondents admit that Mr. Starr provided legal services to the County after he resigned as Archuleta County Attorney and did so as an outside contractor rather than as an employee of the County.
9. Respondents admit that Michael Whiting was an Archuleta County Commissioner in 2015.
10. Respondents admit that Steve Wadley was an Archuleta County Commissioner in 2015.
11. Respondents admit that Clifford Lucero was an Archuleta County Commissioner in 2015.
12. Respondents admit that Mr. Starr currently provides legal services to the County as an outside contractor rather than as an employee of the County.

### **DEFENSES**

- A. The Commission lacks jurisdiction to hear criminal matters.
- B. The Commission lacks jurisdiction to hear of violations of the Colorado Open Meetings Law.
- C. C.R.S. § 24-18-201 does not reach contracts that do not raise a conflict of interest for the government entity and the employee.
- D. C.R.S. § 24-18-201 does not reach contracts where the former government employee *may* use but has not in fact used information “not readily available to members of the public at large” to disadvantage the public entity.
- E. The Legal Services agreement executed on behalf of the County was not a “contract” under C.R.S. § 24-18-201(b)(IV).

- F. The Legal Services agreement executed on behalf of the County was not a “contract” under C.R.S. § 24-18-201(b)(V).
- G. The Commission erred in finding the Complaint not to be frivolous as The Complaint fails to allege “private gain” or “personal financial gain” as defined under C.R.S. § 24-18.5-101(5)(b)(II).
- H. Starr has not taken a position adverse to Archuleta County on any matter since leaving his position as Archuleta County Attorney, let alone one “with which he was directly involved during his employment,” and thus has not violated C.R.S. § 24-18-201(1).

**MOTION FOR DISMISSAL BASED ON LACK OF JURISDICTION FOR  
CRIMINAL AND OPEN MEETINGS LAW ALLEGED VIOLATIONS**

**Standard of Review for Dismissal**

In reviewing a motion to dismiss pursuant to C.R.C.P. 12(b)(1) (lack of jurisdiction), a jurisdictional issue such as standing is a threshold consideration that must be addressed before any consideration may be given to the merits of the matter. *Barber v. Ritter*, 196 P.3d 238, 245 (Colo.2008). Here, the IEC lacks subject matter jurisdiction over the portions of the Complaint alleging violations of criminal law and violations of Colorado’s Open Meetings Law.

- A. The Commission lacks jurisdiction over criminal allegations and should dismiss the portions of the Complaint alleged under Title 18 of the Colorado Revised Statutes.**

While the Respondents deny any criminal wrongdoing, the Commission lacks jurisdiction to consider criminal violations.

Section 5(1) of Article XXIX of the Colorado Constitution vests the Independent Ethics Commission with jurisdiction over ethics issues arising under the provisions of the Article and

any other ethics issues arising under “other standards of conduct and reporting requirements as provided by law.” (Colo. Const. art. XXIX (5)(1)). State statute that provides the implementation framework for the IEC as an independent agency states the same. C.R.S. § 24-18.5-101(4)(a), (6). No relevant authority characterizes the criminal code as a “standard of conduct” to extend the Commission’s jurisdiction over alleged criminal acts. Conversely, the Colorado Constitution and Colorado Revised Statutes explicitly limit the IEC’s authority to matters involving “standards of conduct and reporting requirements as provided by law.” *Id.*

The Colorado Independent Ethics Commission Ethics Handbook explicitly recognizes: “The IEC does not have jurisdiction over criminal statutes.” *See 2013-2015 Colorado Independent Ethics Commission Ethics Handbook* at 6. The Commission’s handbook, consistent with the plain language of Article XXIX, articulates restrictions on the activities of public employees and officials falling into three general categories; gifts, conflicts of interest, and post-employment. *Id.*

While the Commission lacks jurisdiction to consider the criminal violations alleged, it merits mention that Mr. Giehl articulated no “act” as grounds for the crimes he alleged. The complaint relies on mere speculation that Mr. Starr received pay from Archuleta County and Rose Walker to provide the same service at the same time, “double-dipped” as Mr. Giehl alleges. He requests “further investigation of the matter” to determine whether any misappropriation of funds occurred to give rise to criminal liability. Thus, the Complainant actually acknowledges in his complaint that there are not sufficient facts to make out a violation of the criminal statutes cited. Even had the Complaint alleged a specific or an “official act” in support of the claims advanced, because he seeks redress under the criminal statutes rather than an ethical code that applies to Respondents, his complaint should be dismissed.

**B. The Commission lacks jurisdiction over violations of the Colorado Open Meetings Law and should dismiss this portion of the complaint.**

As discussed previously, the IEC possesses jurisdiction to hear complaints arising under **Article XXIX** and any other ethics issues arising under other standards of conduct. (*See* C.R.S. § 24-18.5-101(4)). C.R.S. § 24-6-402 does not qualify as a standard of conduct implicating ethical issues within the purview of the IEC. Given the express provisions of Article XXIX that require a matter brought before this Commission to reflect the alleged violation of an applicable ethical standard, the IEC cannot consider the alleged Open Meetings Law violation.

Furthermore, the statute provides a specific remedy for a violation of the Open Meetings Law. Where a public entity acts without reference to the required pre-meeting notice, “[n]o resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid.” C.R.S. § 24-6-402(8). A person’s ability to invalidate those acts taken by a public entity that violated the Open Meetings Law are, by law, enforceable in the state courts which may issue injunctions to enforce the purposes of the section. C.R.S. § 24-6-402(9).

Mr. Giehl in fact filed a lawsuit in Archuleta County District Court addressing this very matter (Case 2015CV30248). That action is currently pending before the District Court. As such, jurisdiction properly lies with the District Court rather than the IEC.

Finally, in addition to the fact the Commission lacks jurisdiction to consider the complaint, Mr. Giehl lacks standing to assert such a complaint. Provisions of the Open Meetings Law granting state courts jurisdiction to issue injunctions to enforce the Law’s requirements “upon application by any citizen of [the] state” does not grant standing to all citizens to bring actions for violations of the Law; to have standing, citizens are still required to have suffered an injury in fact as a result of the violation. *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d

535, 539 (1977). Notwithstanding lack of standing, the IEC is the inappropriate forum to hear complaints alleging violation of this statute.

**MOTION FOR SUMMARY JUDGMENT REGARDING ALLEGED VIOLATION OF  
C.R.S. § 24-18-201**

**Standard of Review for summary judgment**

A motion for summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

Summary judgment is warranted only where the moving party makes a “clear showing that there exists no genuine issue as to any material fact and that moving party is entitled to judgment as matter of law.” *Greenwood Trust Co. v. Conley*, 938 P.2d 1141, 1149 (Colo. 1997). Summary judgment may be based on undisputed material facts stemming from the pleadings, affidavits, depositions, or admissions in a case. *Siepierski v. Catholic Health Initiative Mountain Region*, 37 P.3d 537, 539 (Colo. Ct. App. 2001). A material fact is “simply a fact the resolution of which will affect the outcome of the case.” *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231, 239 (Colo. 1984).

Upon a motion for summary judgment, the moving party has the “initial burden of showing that there is no genuine issue of material fact.” However, once the moving party has met its initial burden in this respect, the burden shifts to the nonmoving party to establish that there is triable issue of fact. *Greenwood Trust Co., supra*, 938 P.2d at 1149.

**There are no disputed facts at issue.**

The following facts are undisputed:

1. Mr. Starr's annual compensation as a full-time employee of the County was \$109,262.40.
2. The actual budget for County Attorney in 2015 was \$230,215.00.
3. The budget adopted by the County for county attorney in 2016 is \$155,851.00
4. The contract with Rose Walker Starr allowed the county to receive legal services for \$6,000 per month and \$200 per hour for time spent in excess of the amount covered by the retainer.
5. No commissioner had a personal interest in the contract with Rose Walker Starr for the provision of legal services to the County.
6. Mr. Starr did not vote to affirm the County's decision to contract with Rose Walker Starr for the provision of legal services to the County.
7. The interest of Mr. Starr in the contract was disclosed to and, from the face of the agreement was apparent to, all County Commissioners.

Therefore, summary judgment is warranted on the following grounds:

**A. C.R.S. § 24-18-201 does not reach contracts that do not raise a conflict of interest for the government entity and the employee.**

C.R.S. § 24-18-201 proscribes acts relating to contracts and claims relating to public officials and employees. It reads in pertinent part:

- (1) Members of the general assembly, public officers, local government official, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.

The statute does not prohibit every contract with a state agency or local government by a former employee within six months following the termination of his employment. The statute prohibits those involving matters in which the former employee was involved while serving as a government employee. In evaluating possible violations of this statutory provision, the IEC looks to the circumstances of each case to identify *whether a conflict of interests exists* such that a post-government employment contract poses a problem. *See generally, Advisory Opinion 10-08, Letter Ruling 10-02, and Advisory Opinion 13-05.* In analyzing the unique circumstances of each case, the IEC evaluates as dispositive whether the employment poses a conflict of interest. Significantly, the IEC further recognizes that the state agency is in a far better position to analyze potential conflicts of interest and the duties of loyalty owed by the employee than is the Commission. As the IEC stated in Letter Ruling 10-02, pages 4-5 “[i]n general, absent clear facts to the contrary, the Commission is inclined to rely on the position of the state agency involved, given their superior understanding of the duties performed by the state employee involved.” *Advisory Opinion 13-13.* In this case, the government agency, perceiving no conflict—to the contrary, perceiving a benefit to the government—favors the contract.

Colorado Revised Statutes, sections 24-18-101 *et seq.* states recognition on the part of the general assembly that “some actions are conflicts *per se* between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.” *See Advisory Opinion 15-04.* Here, the County contracted for professional services in order to obtain cost savings of tax dollars, given Mr. Starr’s expertise and experience in advising public entities. The alternative – replacing him with another full-time employee – was found not to be in the best interests of the County, either its fiscal interests or its ability to conduct public business for the benefit of the citizens of Archuleta County.

As further described in the attached affidavit by the Chair of the Archuleta County Commission, the Commission considered both alternatives and found that the cost associated with the County Attorney’s annual salary, the various benefits offered to full-time County employees including the County Attorney, and the overhead associated with housing the County Attorney’s function within county government were greater than the use of a contract for professional services with a private law firm. *See* Affidavit of Michael Whiting at ¶ 3. The actual budget allocated to County Attorney in 2015 was \$230,215; the budget adopted for county attorney services in 2016 was \$155,851, resulting in savings of \$74,364 to taxpayers. *Id.* at ¶ 4. Therefore, under C.R.S. 24-18-201(1)(a)(IV), this agreement was not a “contract.”

While the Complaint does not raise concerns under Article XXIX specifically, the IEC’s analysis of post-employment questions under this framework is instructive. Section 3(2) states in pertinent part:

- (2) No public officer, member of the general assembly, local government official, or government employee either directly or indirectly...shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars (\$50) in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment...without the person receiving lawful consideration of equal or greater value in return.

The IEC has found that most employment related offers and negotiations are not prohibited by Section 3(2). *See Position Statement 09-03.* The relevant inquiries include: 1) whether the remuneration that is being offered to the public official or employee is appropriate or patently excessive, and 2) whether the offer or solicitation is made in circumstances indicative of a conflict of interest. *Id.* In conducting this inquiry, the IEC interprets Colorado Constitution Article XXIX in a manner that preserves what it believes was the intent of the electorate – “to

improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests.” *Id.*

Mr. Starr’s post-government employment with the County on a contract basis in no way poses a conflict of interest; Mr. Starr retains an absolute duty of loyalty to the Commission and to place the public interest above any private interest. Unlike previous cases reviewed by the IEC, Mr. Starr did not transition to a contract where he could take advantage of his experience as a county employee in the private sector to the possible detriment of the County. The County Commissioners *effected* the contract with Mr. Starr because the County perceived a *benefit* in the form of significant reduction in cost for the same expertise and necessary services. Additionally, the County perceived a benefit in retaining Mr. Starr’s specific expertise in serving the public. Nothing about the contract suggests that any improper personal gain occurred or will occur as the result of compromising the public trust.

**B. C.R.S. § 24-18-201 does not reach contracts where the former government employee may use information “not readily available to members of the public at large” for the benefit of the public entity rather than a private client whose interests are adverse to the governmental body.**

Under these unique circumstances, Mr. Starr’s post-employment services to the County are identical to those he performed as a full-time employee; unlike other contracts for exchange of goods or services where a post-government employee might take advantage of his or her knowledge of the government agency for personal gain, Mr. Starr, as counsel, retains a professional obligation to act only in the best interests of the County. Affidavit of Todd Starr at ¶ 6; Affidavit of Michael Whiting at ¶ 5. Unlike the situation analyzed by the Commission in Letter Ruling 14-02, Mr. Starr retains a duty of confidentiality with regard to his representation of the Commission. He may in fact use information “not readily available to members of the

public at large.” (See *Letter Ruling 14-02*). However, the use of any information that is not public information is information used, pursuant to the attorney-client privilege, to benefit Archuleta County and its taxpayers and voters.

**C. The legal services agreement executed on behalf of the County was not a “contract” under C.R.S. § 24-18-201(b)(IV).**

C.R.S. § 24-18-201(b)(IV) provides that “contract” does not include:

A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party of if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

As addressed at length above and in the attached affidavits, the legal services agreement between Mr. Starr and the County saves the County the requisite cost that would be incurred with replacement of a full-time employee. That was the understanding of both parties, and that has been the benefit that the County has derived and will continue to derive. Affidavit of Todd Starr at ¶ 8; Affidavit of Michael Whiting at ¶ 6. As such, this type of agreement, even if it is agreed to by parties within the governmental entity before an employee leaves for a private position, is not actionable as a matter of law. Thus, the complaint presents no justiciable issue that the IEC can consider.

**D. The legal services agreement executed on behalf of the County was not a “contract” under C.R.S. § 24-18-201(b)(V).**

C.R.S. § 24-18-201(b)(V) provides that “contract” does not include:

A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted

thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109(3)(b) or 31-4-404(3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and the to the secretary of state, for all others.

Here, Mr. Starr did not have a vote on the matter involving the legal services contract.

The Board was fully aware of Mr. Starr's interest in the contract, which he disclosed. Affidavit of Todd Starr at ¶ 9; Affidavit of Michael Whiting at ¶ 7. No County Commissioner had any such interest, and the Complaint alleges none. Because this arrangement was fully disclosed and the Board took action regarding contracting for his legal services in an open session in light of these disclosures, there can be no violation of the statute.

**E. The Commission erred in finding the Complaint not to be frivolous as the Complaint fails to allege "private gain" or "personal financial gain" as defined under C.R.S. § 24-18.5-101(5)(b)(II).**

C.R.S. § 24-18.5-101(5)(a) requires the Commission to dismiss as frivolous any complaint filed under Article XXIX that fails to allege that a public officer, member of the general assembly, local government official, or government employee has accepted or received any gift or other thing of value for private gain or personal financial gain. The statute requires an "official act" as set forth in section 24-18-102(7). The Complaint alleges no official act resulting in the acceptance or receiving of a thing of value for private or personal financial gain.

"Private gain" or "personal financial gain" means any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official, or government employee. C.R.S. §

24-18.5-101(5)(b)(II). There is no allegation that there was a transfer of a financial benefit “to influence an official act” performed in the scope of the public duties of the County Commissioners. In fact, there was no such transfer for purposes of influencing official action. Affidavit of Todd Starr at ¶ 10; Affidavit of Michael Whiting at ¶ 7. Lacking such “private gain” or “personal financial gain,” the IEC was required by law to dismiss the Complaint as frivolous. Having failed to do so in the first instance, it must do so now.

### CONCLUSION AND REQUESTED RELIEF

Respondents respectfully request that the Commission dismiss Mr. Giehl’s Complaint alleging criminal violations and violation of Colorado’s Open Meetings Law because the IEC lacks jurisdiction in this regard.

With regard to the Complaint alleging a violation of C.R.S. § 24-18-201, Respondents respectfully request that the Commission reconsider its non-frivolous determination and dismiss this complaint as frivolous based on the facts and the law presented. Alternatively, on the merits, Respondents asks the Commission for summary judgment finding that, as a matter of law, no violation occurred.

Respectfully submitted this 18<sup>th</sup> day of March, 2016.

RECHT KORNFELD



Mark Grueskin, No. 14621



Megan Downing, No. 36855

**AFFIRMATION OF TODD STARR**

I affirm that, to the best of my knowledge, information and belief, the statements set out in this response are true.

  
\_\_\_\_\_  
Todd Starr

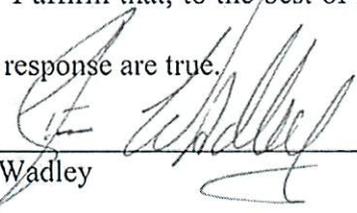
**AFFIRMATION OF MICHAEL WHITING**

I affirm that, to the best of my knowledge, information and belief, the statements set out in this response are true.

  
\_\_\_\_\_  
Michael Whiting

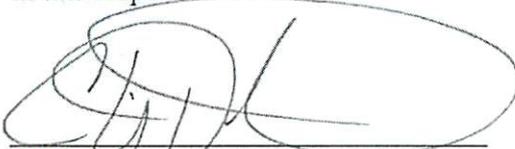
**AFFIRMATION OF STEVE WADLEY**

I affirm that, to the best of my knowledge, information and belief, the statements set out in this response are true.

  
\_\_\_\_\_  
Steve Wadley

**AFFIRMATION OF CLIFFORD LUCERO**

I affirm that, to the best of my knowledge, information and belief, the statements set out in this response are true.

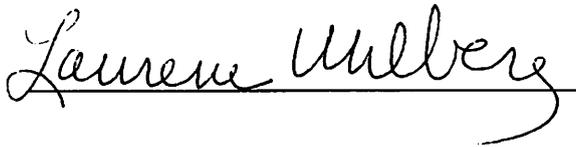
  
\_\_\_\_\_  
Clifford Lucero

**CERTIFICATE OF SERVICE**

I hereby certify that on 18<sup>th</sup> day of March, 2016, I submitted via email and first class mail the foregoing **CONSOLIDATED RESPONSE INCLUDING REQUEST FOR DISMISSAL BASED ON LACK OF JURISDICTION, REQUEST FOR SUMMARY JUDGMENT REGARDING C.R.S. § 24-18-201, AND REQUEST TO RECONSIDER FRIVOLOUSNESS** to the following:

Colorado Independent Ethics Commission  
Dino Ioannides, Executive Director  
101 West Colfax Avenue, Suite 500  
Denver, Colorado 80202  
[iecinfo@state.co.us](mailto:iecinfo@state.co.us)

Greg Giehl  
P.O. Box 5434  
Pagosa Springs, Colorado  
81147  
[Glr2e3g4@live.com](mailto:Glr2e3g4@live.com)



## **AFFIDAVIT OF TODD STARR**

I, Todd Starr, state and affirm the following:

1. I served as the Archuleta County Attorney from 2009 to 2015.
2. I currently provide legal services to Archuleta County as a contractor through my law firm, Walker Rose Starr.
3. Following my resignation as County Attorney, the Board considered the question of whether to replace me with a full time employee or to retain me in a private capacity to continue to provide legal services to the County.
4. The Commission considered both alternatives and found that the cost associated with the County Attorney's annual salary, the various benefits offered to full-time County employees including the County Attorney, and the overhead associated with housing the County Attorney's function within county government were greater than the use of a contract for professional services with a private law firm.
5. The actual budget for County Attorney in 2015 was \$230,215.00. The budget adopted by the County for county attorney in 2016 is \$155,851.00.
6. My post-employment services to the County are identical to those I performed as a full-time employee; unlike other contracts for exchange of goods or services where a post-government employee might take advantage of his or her knowledge of the government agency for personal gain, as counsel I retain a professional obligation to act only in the best interests of the County.
7. I would have had this same obligation to treat any information that I gained as Archuleta County Attorney as confidential and privileged, given the ethical obligations which I am required to comply with as a lawyer. Specifically, the Code of Professional Responsibility would not permit me to take advantage of a former client, based on information I gained during that representation.
8. The legal services agreement between me and the County saves the County the requisite cost that would be incurred with replacement of a full-time employee. That was the understanding of both parties, and that has been the benefit that the County has derived and will continue to derive.
9. The Board was fully aware of my interest in the contract, which I disclosed. Given the nature of the agreement to provide professional services, the County Commissioners had to be aware of my interest, and it was a matter that was evident to and discussed by the Commissioners and me prior to its execution.



## AFFIDAVIT OF MICHAEL WHITING

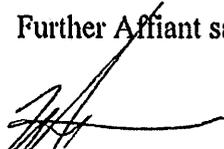
I, Michael Whiting, state and affirm the following:

1. I served as the Chairman of the Archuleta Board of County Commissioners from 2015 to the present.
2. When Todd Starr resigned his position as County Attorney, the Board considered the question of whether to replace Mr. Starr with a full time employee or retain Mr. Starr in a private capacity to continue to provide legal services to the County.
3. The Commission considered both alternatives and found that the cost associated with the County Attorney's annual salary, the various benefits offered to full-time County employees including the County Attorney, and the overhead associated with housing the County Attorney's function within county government were greater than the use of a contract for professional services with a private law firm.
4. The actual budget for County Attorney in 2015 was \$230,215.00. The budget adopted by the County for county attorney in 2016 is \$155,851.00.
5. Mr. Starr's post-employment services to the County are identical to those he performed as a full-time employee; unlike other contracts for exchange of goods or services where a post-government employee might take advantage of his or her knowledge of the government agency for personal gain, Mr. Starr, as counsel, retains a professional obligation to act only in the best interests of the County.
6. The legal services agreement between Mr. Starr and the County saves the County the requisite cost that would be incurred with replacement of a full-time employee. That was the understanding of both parties, and that has been the benefit that the County has derived and will continue to derive.
7. The Board was fully aware of Mr. Starr's interest in the contract, which he disclosed. No transfer of financial benefit "to influence an official act" performed in the scope of the public duties of the County Commissioners occurred.
8. Mr. Starr provides legal services that are not readily available in our part of the state, as the provision of legal services to a public body represent a specialized knowledge that is not regularly practiced by many lawyers in Archuleta County.
9. The County Commissioners could not do without this specialized set of expertise for the six-month waiting period otherwise indicated by statute. The potential liabilities to the County and the disservice to our constituents and taxpayers would not allow such a lapse in legal representation.

10. For the reasons stated in this affidavit, the County Commissioners determined that the public interest was served by execution of the agreement to ensure continued, qualified legal representation.

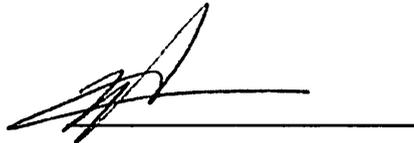
11. No decisions as to this contract were made in private session. A public session was noticed, and discussion on the record was undertaken by the Commissioners. The decision among the commissioners to ensure that there was adequate legal representation of the County, its agencies, and its officers and employees was a unanimous decision by the Board.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Michael Whiting

Verification and Acknowledgement

DATED this 18<sup>th</sup> day of March 2016.

  
\_\_\_\_\_

STATE OF COLORADO )

)ss

COUNTY OF )

this 18<sup>th</sup> day of March 2016 The foregoing Affidavit was subscribed before me by Michael Whiting

WITNESS my hand and official seal.

TONYA M MCCANN  
NOTARY PUBLIC  
STATE OF COLORADO  
[SEAL] NOTARY ID 19954016187  
My Commission Expires: October 14, 2019

  
Notary Public  
My commission expires: Oct 14, 2019