



Henry County Attorney

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June 7, 2024

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Yorke Prough
KILJ News Director
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Mt. Pleasant, IA 52641

Ms. Johannson and Mr. Prough,

In response to the article published on your website on June 6, 2024, at 3:59 p.m., titled “*UPDATED* County Attorney Addresses Henry County Supervisors on Procedure and Expense Reports”, and after speaking personally with Ms. Johannson this morning, I deem it necessary to send you the following statement:

To address inaccuracies contained in your updated article posted June 6, 2024, at 3:59 p.m.:

I spoke with the Henry County Board of Supervisors (BOS) on June 6, 2024, to discuss the retention of outside legal counsel by the Henry County Sheriff. According to Sheriff McNamee, said counsel was retained to represent the Sheriff's Office, Sheriff McNamee, and Deputy Carlos Lopez.

I was not at the meeting to discuss the handling of a criminal case, nor was a criminal case referenced in the meeting.

There is no disagreement between my office and the Sheriff regarding a statement in a report. The Sheriff disagrees with my actions taken in response to discovering a false statement contained in a sworn affidavit, given in support of a search warrant application and in support of three criminal complaints, in addition to other relevant considerations that I will not discuss here.

Deputy Lopez did request a reconsideration of his placement on a Brady/Giglio list. His placement was reconsidered. At the end of the reconsideration period, Deputy Lopez's placement of the Brady/Giglio list was confirmed.

At the June 6, 2024, BOS meeting, I confirmed the following information through discussion with the Supervisors:

The Sheriff did not speak to the BOS to request the appointment of outside counsel. He made a personal phone call to one member of the board to inform them that he had already retained counsel and was asking permission to pay for that counsel out of his budget.

The BOS did not give the Sheriff permission to pursue outside counsel. Said counsel was retained by the Sheriff unilaterally, independently, and without my knowledge or the knowledge of the BOS sometime prior to December 14, 2023.

I did not recommend approval of payment of outside legal fees. My legal opinion was made clear in my January 5, 2024, email to the BOS.

I made the BOS aware of Sheriff McNamee's actions via email on January 5, 2024. I have copied the email below my signature. You should find that email helpful, as it describes the sequence of events, cites Code, and cites a relevant Iowa Supreme Court decision, all of which was read aloud and discussed at the BOS meeting. Please read that information carefully and thoroughly.

I recorded the entire presentation and discussion. I encourage the press to come to my office to watch and listen to that presentation and discussion to ensure the accuracy of any future reporting.

My next step is to continue communication with the Iowa Attorney General's Office and other legal authorities to determine the proper legal course of action based on the information obtained and confirmed at the June 6 BOS meeting.

I would appreciate published corrections/clarifications to the June 6, 2024, updated article as soon as possible. Feel free to publish this statement and attached email in its entirety.

Thank you for your consideration.

Sincerely,

Darin

Darin R. Stater
Henry County Attorney

From: Darin Stater
Sent: Friday, January 5, 2024 12:49 PM
To: Supervisors <Supervisors@henrycountyiowa.us>
Subject: Brady/Giglio Issue and Legal Representation

January 5, 2024

Gentlemen,

As at least two of you are aware, Sheriff McNamee has hired an attorney to represent him and Deputy Carlos Lopez in response to my decision to place Deputy Lopez on what's known as a Brady/Giglio list. I received notice of the attorney's representation of the Sheriff and Deputy on December 14, 2023.

Iowa Code Section 80F.1(24) provides a prosecutor's powers and duties in regard to Brady/Giglio issues. The decision to place an officer on a Brady/Giglio list rests solely with the prosecutor. Section 80F.1(24)(i) states that subsection 24 does not create a private cause of action against a prosecuting agency or an employee of a prosecuting agency.

On December 28th, 2023, I met with several prosecutors from around the state, and member of the Iowa Attorney General's Office to discuss this Brady/Giglio issue. At the recommendation of Jessica Reynolds, PATC Coordinator with the Iowa Attorney General's Office, later that same day I asked Sheriff McNamee if he had obtained Board of Supervisor approval to hire outside counsel. His response on January 2, 2024 is as follows:

"In regard to the fees for Mr. Limkemann's service, the Henry County Board of Supervisors have been notified of his hiring and are aware of impending fees."

Since this response didn't answer my question, I approached Supervisor White and Supervisor Moeller on January 3, 2024 to ask if the Board had approved the hiring of outside counsel. Please correct me if my recollection is faulty, but I believe Supervisor White told me that the Sheriff had called him a day or two prior to ask if Mr. White objected to the Sheriff paying for outside counsel out of the Sheriff's budget. Mr. White told the Sheriff that his budget was his to spend as he saw fit.

Since it didn't appear to me that the Sheriff's attorney had been properly retained, this morning I reached out to Ms. Reynolds and explained the situation. Her response follows:

I was concerned this issue might arise for you. Iowa Code Section 331.751(6) makes it clear that you (the county attorney) are the attorney for county officers which includes the Sheriff. Iowa Code Section 331.754(4) provides "the board may appoint an attorney to act as county attorney in a civil proceeding if the county attorney and all assistant county attorneys are disqualified because of a conflict of interest from performing duties and conducting official business." It is a fairly big step to appoint another attorney to represent an elected official. Your Board of Supervisors should think through that clearly, and be ready for other elected officials to ask for the same thing. Is the board going to consider it a conflict and pay for

outside counsel every time someone disagrees with you? How much money do they plan to budget for outside counsel?

The Board of Supervisors needs to take official action to approve outside counsel for the Sheriff (or any other elected official). See *Stream v. Gordy*, 716 N.W.2d 187 (June 23, 2006). This is true even if the money for outside counsel comes from the elected official's own budget. Official action does not include one call to one supervisor. This will need to be on an agenda and have an official vote. Without official action from the Board, the county will have no obligation to pay these fees.

I agree with Ms. Reynolds's assessment and statement of the law. I have also attached information regarding legal assistance to the County provided by Ethan Anderson in the AG's office. Please review that information thoroughly and carefully, and govern yourselves accordingly.

Sincerely,

Darin R. Stater
Henry County Attorney

Quis Custodiet Ipsos Custodet?