

March 11, 2012

Request for Report, § 153A-225. Medical care of prisoners.
Dialog between Carmine Rocco, Chip (a.k.a. Leon) Killian and Becky Johnson.

This is an e-mail dialog I had with Carmine Rocco, Haywood County Health Director, Chip (a.k.a. Leon) Killian, lawyer for Nelson Mullins and Haywood County Attorney, and Becky Johnson, News Editor of the Smoky Mountain News.

The e-mails from Leon (a.k.a. Chip) Killian have been coming off the Nelson Mullins server, so I am assuming that he is acting in the capacity of a lawyer for Nelson Mullins rather than the Haywood County Attorney.

As is typical with Becky Johnson, she does not take the most current exchange to reply to, rather replies to a portion of the dialog that is not the most current. So I am appending her statements and my response to her in the proper sequence of this dialog I have been having.

For readability, I am resequencing the order of the e-mails. Normally, with an e-mail sequence, the latest e-mail appears at the top, and you have to read from the bottom up. Here, I will start with the earliest e-mail and continue to the end with the latest e-mail. Also, original highlights have been retained, and I may add an occasional [**Editors Note:** ...] for clarity or emphasis. Each e-mail begins on a new page.

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

From: Monroe Miller
Sent: Saturday, March 03, 2012 11:48 AM
To: Carmine Rocco
Cc: David Teague
Subject: Request for public information.

Mr. Rocco,

A while ago, a woman died at the county jail. From the General Statutes:

§ 153A-225. Medical care of prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Health and Human Services. The report shall be made on forms developed and distributed by the Department of Health and Human Services.

I would like to get a copy of that report. A scanned copy send via a .pdf file sent via e-mail would be preferable.

Let me know if I have to go through David Teague for this request.

Thank you,

Monroe Miller

----- Original Message -----
Subject: RE: Request for public information.
Date: Tue, 6 Mar 2012 08:13:53 -0500
From: Carmine Rocco <CRocco@haywoodnc.net>
To: Monroe Miller
CC: David Teague <DTeague@haywoodnc.net>

On 3/6/2012 8:13 AM, Carmine Rocco wrote:

Mr. Miller,

I do not have the report you requested.

Thank you,

Carmine Rocco

Mr. Carmine F. Rocco, MS
Health Director
Haywood County Health Department
PLEASE NOTE NEW ADDRESS
157 Paragon Parkway (Old Wal Mart)
Suite 800
Clyde, NC 28721
Phone: 828-452-6675
Fax: 828-356-1115
Email: crocco@haywoodnc.net
Web: <http://www.haywoodnc.net>

[Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.]

From: Monroe Miller
Sent: Tuesday, March 06, 2012 8:42 AM
To: Carmine Rocco; Chip Killian; Chip Killian; Mark S. Swanger; J W. Kirkpatrick;
Bill L. Upton; Michael T. Sorrells
Cc: David Teague; Marty Stamey
Subject: Re: Request for public information.

Why?

----- Original Message -----

Subject: RE: Request for public information.

Date: Tue, 6 Mar 2012 08:47:26 -0500

From: Carmine Rocco <CRocco@haywoodnc.net>

To: Monroe Miller, Chip Killian <chip.killian@nelsonmullins.com>, Chip Killian <CKillian@haywoodnc.net>, "Mark S. Swanger" <markswanger@bellsouth.net>, "J W. Kirkpatrick" <kirk@jwklaw.net>, "Bill L. Upton" <billupton@bellsouth.net>, "Michael T. Sorrells" <sorrells@cbvnol.com>

CC: David Teague <DTeague@haywoodnc.net>, Marty Stamey <MStamey@haywoodnc.net>, Bobby Suttles <suttles@haywoodnc.net>

On 3/6/2012 8:47 AM, Carmine Rocco wrote:

Mr. Miller,

Please contact the Sheriff's Department.

Thank you,

Carmine Rocco

Mr. Carmine F. Rocco, MS
Health Director
Haywood County Health Department
PLEASE NOTE NEW ADDRESS
157 Paragon Parkway (Old Wal Mart)
Suite 800
Clyde, NC 28721
Phone: 828-452-6675
Fax: 828-356-1115
Email: crocco@haywoodnc.net
Web: <http://www.haywoodnc.net>

From: Monroe Miller
Sent: Tuesday, March 06, 2012 11:28 AM
To: Bobby Suttles; Carmine Rocco; Chip Killian; Chip Killian; Roy Cooper; Bev Purdue
Cc: Mark Swanger; Bill Upton; Kirk Kirkpatrick; Michael Sorrells; David Teague;
Marty Stamey; Elliott, David
Subject: Re: Request for public information.

Sheriff Suttles,

I'm trying to figure out why Carmine Rocco, Health Director of Haywood County, does not have a report of the woman that died recently in jail as required by:

§ 153A-225. Medical care of prisoners.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Health and Human Services. The report shall be made on forms developed and distributed by the Department of Health and Human Services.

© If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a Class 1 misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3; 1989, c. 727, s. 204; 1991, c. 237, s. 2; 1993, c. 539, s. 1062; 1994, Ex. Sess., c. 24, s. 14©; 1995, c. 385, s. 1; 1997-443, s. 11A.112; 2003-392, s. 1; 2004-199, s. 46(a).)

Can you tell my why Rocco does not have a copy of the report? Rocco certainly knows what a Class 1 misdemeanor is [re: The Rule].

Can I get a copy from you or should I ask Kathleen Sebelius, Secretary of the Department of Health and Human Services (HHS), who should also have the report?

Thank you,

Monroe Miller

----- Original Message -----

Subject: RE: Request for public information.

Date: Tue, 6 Mar 2012 12:12:53 -0500

From: Chip Killian <chip.killian@nelsonmullins.com>

To: Monroe Miller, Bobby Suttles <suttles@haywoodnc.net>, Carmine Rocco <CRocco@haywoodnc.net>, Chip Killian <CKillian@haywoodnc.net>, Roy Cooper <OpenGov@ncdoj.gov>, Bev Purdue <governor.office@nc.gov>

CC: Mark Swanger <markswanger@bellsouth.net>, Bill Upton <billupton@bellsouth.net>, Kirk Kirkpatrick <kirk@jwklaw.net>, Michael Sorrells <sorrells@cbvnl.com>, David Teague <DTeague@haywoodnc.net>, Marty Stamey <mstamey@haywoodnc.net>, Elliott, David <Delliott@ncdoj.gov>

On 3/6/2012 12:12 PM, Chip Killian wrote:

Mr. Miller:

This case is in litigation and Sheriff Suttles has been advised both by me and by the attorney handling the case, that he is not to discuss the case or any of its aspects with anyone.

Best regards,

Chip Killian

From: Monroe Miller
Sent: Tuesday, March 06, 2012 12:22 PM
To: Chip Killian
Cc: Bobby Suttles; Carmine Rocco; Chip Killian; Roy Cooper; Bev Purdue; Mark Swanger; Bill Upton; Kirk Kirkpatrick; Michael Sorrells; David Teague; Marty Stamey; Elliott, David
Subject: Re: Request for public information.

Mr. Killian,

I was not asking to discuss the case with Sheriff Suttles, nor any aspects of the case. All that I was asking for is a copy of the public record as specified by [§ 153A-225. Medical care of prisoners.](#)

Again, I am requesting a public record. Please ask Sheriff Suttles to provide me a copy, or if you have a copy, please forward it to me.

Thank you,

Monroe Miller

----- Original Message -----

Subject: RE: Request for public information.

Date: Tue, 6 Mar 2012 13:09:46 -0500

From: Chip Killian <chip.killian@nelsonmullins.com>

To: Monroe Miller

CC: Bobby Suttles <suttles@haywoodnc.net>, Carmine Rocco <CRocco@haywoodnc.net>, Chip Killian <CKillian@haywoodnc.net>, Roy Cooper <OpenGov@ncdoj.gov>, Bev Purdue <governor.office@nc.gov>, Mark Swanger <markswanger@bellsouth.net>, Bill Upton <billupton@bellsouth.net>, Kirk Kirkpatrick <kirk@jwklaw.net>, Michael Sorrells <sorrells@cbvnol.com>, David Teague <DTeague@haywoodnc.net>, Marty Stamey <mstamey@haywoodnc.net>, Elliott, David <Delliott@ncdoj.gov>

On 3/6/2012 1:09 PM, Chip Killian wrote:

Mr. Miller:

I am informed that Sheriff Suttles does not possess the record you are requesting.
Chip Killian

From: Monroe Miller
Sent: Tuesday, March 06, 2012 1:37 PM
To: Chip Killian; Bobby Suttles; Carmine Rocco; Chip Killian; Roy Cooper; Bev Purdue
Cc: Mark Swanger; Bill Upton; Kirk Kirkpatrick; Michael Sorrells; David Teague;
Marty Stamey; Elliott, David
Subject: Re: Request for public information.

Mr. Killian,

[?]

Did Sheriff Suttles ever create the record?

Did he ever possess the record?

If he did, where is it right now?

If it was created with a word processor, is the record on a county back-up system server somewhere?

Do you have a copy of the record? If you do, can you please forward it?

If the administrator (presumably the Sheriff) of the facility did not create the report within 5 days after the day of the death, then the Sheriff would be guilty of a Class 1 misdemeanor and have to resign, due to a violation of the oath of office that he took to uphold the laws of the State of North Carolina. Carmine Rocco is not in such good shape either.

Please see if you can locate this record...

Thank you,

Monroe Miller

----- Original Message -----

Subject: RE: Request for public information.

Date: Tue, 6 Mar 2012 14:27:03 -0500

From: Chip Killian <chip.killian@nelsonmullins.com>

To: Monroe Miller, Bobby Suttles <suttles@haywoodnc.net>, Carmine Rocco <CRocco@haywoodnc.net>

CC: Mark Swanger <markswanger@bellsouth.net>, Bill Upton <billupton@bellsouth.net> ,

Kirk Kirkpatrick <kirk@jwklaw.net>, Michael Sorrells <sorrells@cbvnol.com>, David

Teague <DTeague@haywoodnc.net>, Marty Stamey <mstamey@haywoodnc.net>, Elliott, David

<Delliott@ncdoj.gov>, Roy Cooper <OpenGov@ncdoj.gov>, Bev Purdue

<governor.office@nc.gov>

On 3/6/2012 2:27 PM, Chip Killian wrote:

Mr. Miller:

I am told the record you are requesting does not exist. As has been reported by the media, the subject did not die in the local confinement facility. She was in the hospital at the time of her death.

The proper record would be the death certificate and it can probably be found at the Register of Deeds.

Regards,
Chip Killian

----- Original Message -----

Subject: Re: Request for public information.

Date: Tue, 06 Mar 2012 17:47:55 -0500

From: Monroe Miller

To: Chip Killian <chip.killian@nelsonmullins.com, Bobby Suttles <suttles@haywoodnc.net, Carmine Rocco <CRocco@haywoodnc.net, "Elliott, David" <DElliott@ncdoj.gov, Roy Cooper <OpenGov@ncdoj.gov, Bev Purdue <governor.office@nc.gov

CC: Mark Swanger <markswanger@bellsouth.net, Bill Upton <billupton@bellsouth.net, Kirk Kirkpatrick <kirk@jwklaw.net, Michael Sorrells <sorrells@cbvnol.com, David Teague <DTeague@haywoodnc.net, Marty Stamey <mstamey@haywoodnc.net

Mr. Killian,

There was no report created? Try to be a little more straightforward in your future responses.

The smoky mountain news indicated (like I can believe anything in the local media):
" ... who died last week after collapsing in a holding cell at the Haywood County Justice Center."

A "holding cell at the Haywood County Justice Center" is a confinement facility in my book.

A report should have been created under any circumstances to alleviate any appearance of impropriety. No wonder you are getting sued!

Waiting to hear from the lawyers representing the family of Jessica Martin...

Will keep you advised.

Best regards,

Monroe Miller

----- Original Message -----

Subject: Fwd: Re: Request for public information.

Date: Tue, 06 Mar 2012 19:20:07 -0500

From: Monroe Miller

To: Vicki Hyatt <vhyatt@themountaineer.com>, Becky Johnson <becky@smokymountainnews.com>, Leon Killian <chip.killian@nelsonmullins.com>, Chip Killian <CKillian@haywoodnc.net>

CC: Bobby Suttles <suttles@haywoodnc.net>, Carmine Rocco <CRocco@haywoodnc.net>, "Elliott, David" <Delliott@ncdoj.gov>, Roy Cooper <OpenGov@ncdoj.gov>, Bev Purdue <governor.office@nc.gov>, Mark Swanger <markswanger@bellsouth.net>, Bill Upton <billupton@bellsouth.net>, Kirk Kirkpatrick <kirk@jwklaw.net>, Michael Sorrells <sorrells@cbvnol.com>, David Teague <DTeague@haywoodnc.net>, Marty Stamey <mstamey@haywoodnc.net>

FYI

[Editors Note: Forwarded to the mountaineer and smoky mountain news].

----- Original Message -----

Subject: Re: Request for public information.

Date: Wed, 07 Mar 2012 07:50:04 -0500

From: Monroe Miller

To: Leon Killian <chip.killian@nelsonmullins.com, Chip Killian
<CKillian@haywoodnc.net, Carmine Rocco <CRocco@haywoodnc.net

CC: Bobby Suttles <suttles@haywoodnc.net, "Elliott, David" <Delliott@ncdoj.gov, Roy
Cooper <OpenGov@ncdoj.gov, Bev Purdue <governor.office@nc.gov, Mark Swanger
<markswanger@bellsouth.net, Kirk Kirkpatrick <kirk@jwklaw.net, Bill Upton
<billupton@bellsouth.net, Michael Sorrells <sorrells@cbvnol.com, David Teague
<DTeague@haywoodnc.net, Marty Stamey <mstamey@haywoodnc.net, Vicki Hyatt
<vhyatt@themountaineer.com, Becky Johnson <becky@smokymountainnews.com

Mr. Killian,

I have not heard as yet from the lawyers for the relatives of Jessica Martin. When I am finally in contact with them, I will suggest that they should think about adding Carmine Rocco to the list of people to depose. Carmine Rocco, it seems to me, could be equally as culpable as "the administrator" who did not create a report per § 153A-225. Medical care of prisoners. Rocco should have known about the requirements of the statute and requested / demanded that a report be forthcoming to cover his ass, so there would be no likelihood of him being accused of possible guilt of a Class 1 misdemeanor, as the statute is written. My suggestion to Rocco is to request a report be created now. That way, he will be covered a little bit. You have heard the old saying: "better late than never".

Chip, you wouldn't have the contact information for the lawyers who are filing suit against the county, would you? You know, name of the firm, a contact person in the firm, their phone number, e-mail address, stuff like that. I believe the firm is located in Charlotte, if that helps.

If you don't have it handy, I suppose I could make a trip down to the Justice Center and inspect the actual lawsuit, get a copy and post it on my website while I'm at it. I am starting to get pretty good at doing that kind of thing.

Best regards,

Monroe Miller

----- Original Message -----

Subject: Re: Request for public information.

Date: Thu, 08 Mar 2012 22:59:03 -0500

From: Becky Johnson <becky@smokymountainnews.com>

To: Monroe Miller, Vicki Hyatt <vhyatt@themountaineer.com>, chip killian <chip.killian@nelsonmullins.com>, Chip Killian <CKillian@haywoodnc.net>

CC: Bobby Suttles <suttles@haywoodnc.net>, Carmine Rocco <CRocco@haywoodnc.net>, "Elliott, David" <Delliott@ncdoj.gov>, Roy Cooper <OpenGov@ncdoj.gov>, Bev Purdue <governor.office@nc.gov>, mark swanger <markswanger@bellsouth.net>, Bill Upton <billupton@bellsouth.net>, kirk kirkpatrick <kirk@jwklaw.net>, Michael Sorrells <sorrells@cbvnol.com>, david teague <dteague@haywoodnc.net>, Marty Stamey <MStamey@haywoodnc.net>

On 3/8/2012 10:59 PM, Becky Johnson wrote:

Monroe,

I was not the reporter who wrote this article and thus am not an expert on this, but you will notice it says she died "after" collapsing at the justice center. It does not say she died "at" the justice center. So it may well mean that died at some point later, not at the time of the actual collapse.

--

Becky Johnson, news editor
Smoky Mountain News
828-507-9141 (cell)
828-452-4251 (office)

----- Original Message -----

Subject: Re: Request for public information.

Date: Thu, 08 Mar 2012 23:40:47 -0500

From: Monroe Miller

To: Becky Johnson <becky@smokymountainnews.com, chip killian <chip.killian@nelsonmullins.com, Chip Killian <CKillian@haywoodnc.net
CC: Vicki Hyatt <vhyatt@themountaineer.com, Bobby Suttles <suttles@haywoodnc.net, Carmine Rocco <CRocco@haywoodnc.net, "Elliott, David" <Delliott@ncdoj.gov, Roy Cooper <OpenGov@ncdoj.gov, Bev Purdue <governor.office@nc.gov, mark swanger <markswanger@bellsouth.net, Bill Upton <billupton@bellsouth.net, kirk kirkpatrick <kirk@jwklaw.net, Michael Sorrells <sorrells@cbvnol.com, david teague <dteague@haywoodnc.net, Marty Stamey <MStamey@haywoodnc.net

Becky,

So that means that the person who wrote the article **is** an expert on that, since you have indicated that (you) are not?

For your information, the article I was quoting from the smoky mountain news was entitled **SBI won't investigate Haywood jail death**, written by Colby Dunn, dated August 17, 2011, which is where Chip Killian advised that I look for information - your newspaper.

Not convinced I should be using the local newspapers as my source of information, as Killian recommended, I have since made a visit to the Justice Center and posted the actual lawsuit against the county, 11 CVS 1084 on my website, www.haywoodtp.net.

Quoting from the COMPLAINT, FACTUAL BACKGROUND, page 4, item 14:

"14. That shortly after the assessment by Defendant Smathers on 10 August 2011, upon information and belief, within a short period of time after the Defendant Smathers saw Plaintiff's decedent and purported to make an assessment of her physical condition, an emergency call was placed to Haywood County EMS noting that the nature of the call was "emergency unconscious." that Plaintiff's decedent was on the second floor court holding area outside the courtroom, and that she was having a hard time breathing. Plaintiff's decedent was rushed to the local hospital where she died a few hours later."

Her death occurred while she was still in the custody of armed Haywood County Sheriff's Deputies, at the hospital. So I suppose it will be up to the jury now to determine if they consider that since she was still being held under armed guard at the hospital, if the hospital itself was considered a confinement facility, at least as far as concerning Jessica Martin and [§ 153A-225. Medical care of prisoners.](#)

Monroe Miller

eof.