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DOUGLAS J. PETERSON
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LESLIE S. DONLEY
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June 23, 2015

Billy Ray Hoscheit
616 N. West St.
Plainview, NE 68769

RE: *File No. 15-R-127; Corey Steel, State Court Administrator; Billy Ray Hoscheit, Petitioner*

Dear Mr. Hoscheit:

We are writing in response to your email correspondence received by this office on June 5, 2015. Specifically, you are challenging the estimated costs associated with your request for an audio recording of a court hearing. As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In the present case, since you were seeking the audio recording(s) from the Pierce County Court, we contacted that court's clerk magistrate and deputy clerk—Deb Theisen and Beth Blair. On June 17, 2015, Ms. Blair provided this office with a written response to your complaint. We considered your correspondence to be a petition under § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on the information contained in your petition and the response we received from Ms. Blair. Your complaint, set out verbatim in its entirety, states:

> Pierce Co Court Clerks tell me I must pay $10 for an audio cd of my court hearing as per Appendix 9 adopted nov. 23, 2011. The Nebraska Records Act Sept. 6, 2013 § 84-712(3)(b) now provides that fees for copies of public records shall not exceed the actual added cost of making the copies available. I have been told I can't make a copy myself because I am not allowed access to the system. I question my having to pay over

> $100 to obtain a recording of the judge telling me that "you certainly have the right to say the things you've said, but perhaps you should consider giving up some of your rights.", in reference to "getting along" with the Nazi hoard that is DHHS. I am not going away.

According to Ms. Blair, on Tuesday, May 26, 2015, you submitted a public records request to the Pierce County Court office. Your request stated, in pertinent part: "I BILLY RAY HOSCHEIT REQUEST TO INSPECT ALL AUDIO RECORDINGS OF CASES CONCERNING MYSELF IN PIERCE CO. COURT ROOM BETWEEN JULY 2011 & MARCH 2013." Ms. Blair states that she advised you of the procedure to make CD copies of court proceedings. She indicates that you did not wish to pay for copies, or receive CDs, but "just wanted to inspect the record." She indicates that she offered to give you copies of the journal entries from the various hearings, but that you did not want a written record, but rather a transcript of the testimony. Ms. Blair indicates that she explained to you the procedure for receiving typewritten court transcripts. You indicated that you did not want the typewritten transcript, only the audio record. Ms. Blair states that she told you that she "was unaware of another method by which [she] could provide [you] the ability to inspect the audio records without making CD copies for [you]." She told you that she would check into the matter and contact you regarding her findings. Ms. Blair then contacted Judge Stoffer and Ms. Theisen who concurred that the method to inspect the record would be by requesting CD copies. Ms. Blair indicates that she called you the same day and left a voice mail confirming that you could request CD copies. She indicated that you would have to prepay. She also advised that your request encompassed fourteen hearings relating to one criminal case [CR13-127, *State of Nebraska v. Billy Ray Hoscheit*] and two juvenile cases [JV13-8, *In the Interest of Hunter Hoscheit*; and JV13-9, *In the Interest of Skylar Hoscheit*]. Ms. Blair states that she told you that she would be glad to make the CD copies, and to contact the court if you wished to proceed.

Ms. Blair indicates that you returned to the office several days after your initial request. She states that you inquired as to who set the fees for records, and that she gave you a copy of the form, "Request Form for Copy of Digital Audio Record (County Court Only)." Ms. Blair states that you inquired as to whether the form was a Pierce County Court form. She advised that it was not, and she believed it was from the Administrative Office of the Courts. She states that you inquired as to how long it would take to make the CD copies, and she replied that it would be the following week due to scheduling/staffing. She states that you inquired as to how long it would take to actually burn the CDs. She replied that it would not take long per hearing, but would take time to set up the process and locate each specific hearing. Ms. Blair states that you inquired again how long it would take to make copies. She told you that she could not tell you exactly, but was aware that some of the hearings at issue were lengthy, and she would not know until she got into the courtroom to make the copies. Ms. Blair states that you left her office without proceeding with your request or prepaying for the CDs.

RELEVANT CONSTITUTIONAL AND REGULATORY PROVISIONS

Art. V, § 25 of the Nebraska Constitution states, in pertinent part:

> For the effectual administration of justice and the prompt disposition of judicial proceedings, the supreme court may promulgate rules of practice and procedure for all courts, uniform as to each class of courts, and not in conflict with laws governing such matters.

Accordingly, the Supreme Court has promulgated uniform rules for practice and procedure for county courts. One such rule, § 6-1405, "Recording of court proceedings; request for transcription; request for copy of digital recording," provides, in pertinent part:

> (A) All proceedings in county court shall be recorded, and such proceedings shall be preserved as set forth in the County Court Records Retention Schedule. Requests for a transcription of such recording shall be made and paid for as in § 6-1452.
>
> (B) Except for "restricted hearings," as defined herein, in cases where the county court proceedings have been digitally recorded by the court, any person may request a copy of the audio record of a court proceeding. The request shall be made on a form approved by the State Court Administrator as set out at Appendix 9 and shall contain:
>
> > (1) The case number, case name, date, time and location, and judge of the hearing for which the copy of the recording is sought;
> >
> > (2) That portion of the hearing requested;
> >
> > (3) Acknowledgment that the recording is not the official court record; and
> >
> > (4) Requesting party's agreement that it will comply with all laws regarding privacy of information; and agreement not to publish or disseminate any content that may be protected, including, but not limited to, the information described in §§ 6-1521, 6-1464, and 6-1701.
>
> * * *
>
> **(F) The cost of the copy shall be paid prior to preparation of the copy. The cost shall be $10 for the first hearing copied ($5 for materials to the county and $5 for court staff time spent on the**

> **recording). There shall be a $5 charge for each additional hearing copied onto the same compact disc (CD) and a charge of $5 for each additional CD required. (Emphasis added.)**

DISCUSSION

As indicated above, the Nebraska Constitution authorizes the Supreme Court to promulgate rules relating to the uniform practice and procedure for all courts, including the county courts in this state. The Supreme Court has promulgated a rule which allows a person to request and receive a copy of an audio record of a county court proceeding, provided the proceeding is not restricted, and a digital recording of the proceeding exists. In order to receive the record, the requester must fill out an approved form, providing information including, but not limited to, case name and number, date, time and location, the presiding judge, and portion of the hearing requested. Other assurances are also required. We believe that Neb. Ct. R. § 6-1405 governs the process by which you may obtain a CD recording of a court proceeding, not the NPRS.[1]

In your petition, you challenge "having to pay over $100 to obtain a recording of the judge telling me that 'you certainly have the right to say the things you've said, but perhaps you should consider giving up some of your rights . . . .'" It is our understanding that the $100 estimate relates to providing you CD recordings of *fourteen* specific hearings. And, according to Ms. Blair, some of these hearings are quite lengthy. We would suggest that you limit your request to only the hearing or hearings you actually need in order to reduce your costs. In addition, it seems to us that Ms. Blair has attempted to accommodate your request in a timely and efficient manner. Finally, we see nothing in your complaint that would support our finding that Mr. Steel, Ms. Theisen or Ms. Blair has acted in any way which could be construed as unlawfully denying you access to these recordings. As a result, we are closing this file.

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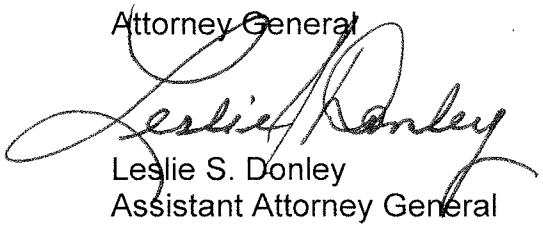
[1] We have attached a copy of the rule for your review and reference.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

Attachment

c: Corey Steel
Deb Theisen
Beth Blair

49-1331-29

§ 6-1405. Recording of court proceedings; request for transcription; request for copy of digital recording.

(A) All proceedings in county court shall be recorded, and such proceedings shall be preserved as set forth in the County Court Records Retention Schedule. Requests for a transcription of such recording shall be made and paid for as in § 6-1452.

(B) Except for "restricted hearings," as defined herein, in cases where the county court proceedings have been digitally recorded by the court, any person may request a copy of the audio record of a court proceeding. The request shall be made on a form approved by the State Court Administrator as set out at Appendix 9 and shall contain:

(1) The case number, case name, date, time and location, and judge of the hearing for which the copy of the recording is sought;

(2) That portion of the hearing requested;

(3) Acknowledgment that the recording is not the official court record; and

(4) Requesting party's agreement that it will comply with all laws regarding privacy of information; and agreement not to publish or disseminate any content that may be protected, including, but not limited to, the information described in §§ 6-1521, 6-1464, and 6-1701.

(C) A request to limit public access to information in a court recording may be made by any party to a case, an individual identified in the court record, or on the court's own motion. For good cause, the court may limit the manner or extent of public access. In limiting the manner or extent of access, the court will use the least restrictive means that achieves the purposes of these access rules and the needs of the requestor.

(D) "Restricted hearings" shall mean any court proceeding that is closed to the public for any reason or any proceeding subject to an order pursuant to § 6-1405(C). Parties, counsel of record, and individuals present and participating in "restricted hearings" may request a copy of the audio record of such restricted hearings. The requesting party shall be required to give notice of the request to all interested parties and advise them of their right to file, with the court within 10 days, an objection to the requested copy. If an objection is filed, the court shall set a hearing giving the objector an opportunity to show cause why the copy should not be provided, or why it should be redacted in some manner.

(E) Before providing an electronic copy, court staff shall review the court file of the proceeding subject to the request to determine if any access limitation under § 6-1405(C) has been ordered or is pending. Court staff shall also notify the judge presiding at the hearing which is the subject of the request(s), or the presiding judge of the jurisdiction, of the request for an electronic copy.

(F) The cost of the copy shall be paid prior to preparation of the copy. The cost shall be $10 for the first hearing copied ($5 for materials to the county and $5 for court staff time spent on the recording). There shall be a $5 charge for each additional hearing copied onto the same compact disc (CD) and a charge of $5 for each additional CD required.

Rule 5 amended November 10, 2004. Renumbered and codified as § 6-1405, effective July 18, 2008; § 6-1405 amended June 8, 2011; § 6-1405(A) - (F) amended November 23, 2011.