

STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

December 8, 2011

Stacy Ryan
[REDACTED]

RE: *File No. 11-R-131; Douglas County Court; Stacy Ryan, Petitioner*

Dear Ms. Ryan:

We are writing in response to your correspondence faxed to us on September 29, 2011, in which you indicate that the Douglas County court administrator gave you a audio cassette recording of the hearing held on August 18, 2011, which was "audible but unintelligible." You have asked us to reconsider our earlier opinion, i.e., that you are "entitled to a recording of this public record that is intelligible." You have also asked us to "reconsider or clarify" our opinion that you are "not 'technically' entitled to a transcript."

We have talked directly to court personnel about the tape that was provided to you. They have told us that they were unable to adjust the speed control when dubbing the tape. Court personnel also told us that they produced the best tape they could using the Lanier equipment involved. We understand that you are having difficulty listening to the tape on a standard audio cassette player. However, as we pointed out to you in our September 21, 2011, response, a public body is not required "to produce or generate any public record in a new or different form or format modified from that of the original public record." Neb. Rev. Stat. § 84-712(3)(c). Consequently, we believe the tape you received satisfied the requirements of the law. Moreover, we assume that these court officials have acted in good faith and, without any direct evidence to convince us otherwise, we will accept their representations made to us concerning this tape recording.

We will now address our previous statement that you are not technically entitled to receive a transcript of a court proceeding. In accordance with art. V, § 25 of the Nebraska Constitution, the Supreme Court has promulgated uniform rules for practice

and procedure for county courts. One such rule, § 6-1405,¹ Recordings of court proceedings, 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.

Section 6-1452, which relates to appeals taken from the county court, provides in pertinent part:

(B) Bills of Exceptions.

(1) How ordered. An *appellant*² may order a bill of exceptions by filing a request with the clerk of the county court at the time the notice of appeal is filed. The request shall specifically identify each portion of the evidence and exhibits offered at any hearing which the party appealing believes material to the issues to be presented for review.

(2) Preparation. The county court stenographer shall prepare only the portions of evidence specified in the request for preparation of the bill of exceptions. At the same time, the appellant shall serve a copy of the request upon all parties.

* * *

(3) Settlement, signature, and allowance. When the bill of exceptions has been prepared, it shall be reviewed by the county judge or court stenographer, as the county judge elects, to determine whether the bill of exceptions conforms to applicable rules and is an accurate transcription of the tape recording. The person who completes the review and finds the bill of exceptions acceptable shall sign a certificate to be included in the bill of exceptions certifying that it is an accurate transcription of the proceeding.

(4) Filing. The bill of exceptions shall be filed in the office of the clerk of the district court by a county court employee as soon as the certificate is signed.

¹ We note that on November 23, 2011, the Nebraska Supreme Court adopted changes to § 6-1405. A copy of the revised rule is enclosed for your convenience.

² An "appellant" is defined as "[a] party who appeals a lower court's decision, usu. seeking reversal of that decision." BLACK'S LAW DICTIONARY, 76 (abridged 7th ed. 2000).

Stacy Ryan
December 8, 2011
Page 3

(Emphasis added.)

We have interpreted this language to mean that only parties who seek to appeal a decision of the county court are entitled to have the trial/hearing transcribed. This court rule does not conflict with the NPRS because the county court is not required to produce a record in a new or different format than that of the original record. Under the NPRS, you are entitled to receive a copy of the recording if copying equipment is reasonably available. Neb. Rev. Stat. § 84-712 (3)(a). However, the county court is not required to transcribe the recording for you unless you are a party taking an appeal.

We believe that your reliance on § 84-1205.06 of the Records Management Act (Neb. Rev. Stat. §§ 84-1201 through 84-1227 (2008, Cum. Supp. 2010)) is also misplaced. The statute allows a person to request a copy of a public record "in any and all media in which the agency is capable of providing it." We believe that this statute contemplates that if a public record is maintained or generated in a variety of media, i.e., electronically, on paper, on a CD, etc., then the agency must produce the record in any or all of these media, pursuant to the requester's election. The statute does not contemplate that the state agency is required to reproduce the public record in a different medium if it does not already exist in that particular medium. Section 84-1205.06(2) also allows a state agency to deny a request for a copy of a public record in a particular medium if the request is unreasonably complicated; if the request is for a medium not normally used by the state agency and would cause undue time or expense; or if the record in the requested medium can be obtained elsewhere for the same or less money. In sum, we do not believe that this statute requires a court to transcribe a tape recording of a hearing.

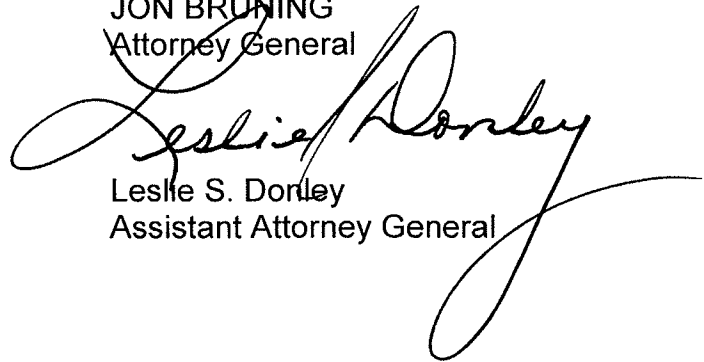
If you received transcriptions of hearings in the past, you did so because the court personnel may have misapplied the rules. However, the Attorney General does not enforce the Nebraska Court Rules or the Records Management Act. We have reviewed this file again, and it appears to us that you received what you were entitled to under the Nebraska Public Records Statutes, and we are closing this file. If you disagree with our analysis, you have a private cause of action under Neb. Rev. Stat. § 84-712.03. And if you prevail on the merits, you may be able to receive attorney fees

Stacy Ryan
December 8, 2011
Page 4

and court costs. Remember that you always have the option to record the hearing on site using your own recording equipment.

Sincerely,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Leslie S. Dorley". The signature is fluid and cursive, with a large loop at the end of the last name.

Leslie S. Dorley
Assistant Attorney General

Enclosure

c: Leslie A. Douglas (w/o enc.)

49-701-30

On November 23, 2011, the Nebraska Supreme Court adopted the following amendments to Neb. Ct. R. § 6-1405 and Appendix 9:

CHAPTER 6

TRIAL COURTS

ARTICLE 14

UNIFORM COUNTY COURT RULES OF PRACTICE AND PROCEDURE

Section.

....

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

....

Appendix 9. Request form for copy of digital audio record.

....

§ 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.

REQUEST FORM FOR COPY OF DIGITAL AUDIO RECORD

A court proceeding that has been captured through the use of an electronic recording device can be, upon request, copied onto a compact disc (CD). The audio recording will be presented in an MP3 format.

The cost of the copy is \$10 for the first hearing that will fit on one CD. There is an additional charge of \$5 for each additional hearing on a CD and a charge of \$5 for each additional CD required.

This form is used for the purpose of requesting a copy of a digitally recorded court proceeding. This form must be completed entirely in order for the court staff to process your request timely. All the information requested below can be found in the case file. All arrangements for a CD copy are made directly with the court staff at the court where the hearing was held.

Case No.: _____
Case Name: _____
Date of Hearing: _____
Time and Location: _____
Judge at Hearing: _____

Full Hearing
 Partial Description of portion being requested _____

I would like a CD copy of the electronically recorded proceeding(s) described above.

I acknowledge that this recording IS NOT the official court record; and

I agree that I will comply with all laws regarding privacy of information and not to publish or disseminate any content that may be protected, including, but not limited to, the information described in Neb. Ct. R. §§ 6-1464, 6-1521, and 6-1701.

Name: _____
Address: _____
City/State/Zip: _____
E-mail (optional): _____

Signature of Requestor: _____ Date: _____