

August 21, 2000

Mr. Carl A. Erlewein
DOC # 870270 Location D-101
Indiana Department of Correction
Wabash Valley Correctional Facility
Post Office Box 1111
Carlisle, IN 47838

Re: Advisory Opinion 00-FC-29 *Denial of Access to Public Records by the Fayette County Clerk's Office for Nonpayment of Copying Fees.*

Dear Mr. Erlewein:

This is in response to your formal complaint, which was received on August 16, 2000. You have requested an opinion as to whether the Fayette County Clerk, Melinda Sudhoff, (hereinafter, "Clerk") violated the Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter, "APRA,") by requiring you to pay copying fees related to your request for access to court records. Clerk Sudhoff responded to your complaint and a copy of her response is enclosed for your reference.

It is my opinion that the Clerk may collect a copying fee unless there is a valid court order directing otherwise, which would include an order granting indigent status. The refusal to waive the copying fee in response to your requests dated July 21 and August 4, 2000 did not violate the APRA.

BACKGROUND

According to the facts presented in your complaint, you made two written requests to the Clerk for copies of records in and concerning the court file with a cause number, 21C01-9710-DF-238. You claimed in an "affidavit of indigency" that the copying fees must be waived because you are unable to pay the cost of the proceedings. In response to both requests, you received a written note from the Clerk's Office indicating that you would be required to pay \$1.00 per page for each of the forty-three (43) pages you requested.

According to Clerk Sudhoff, she presented your "affidavit" to Judge Pflum for consideration. Judge Pflum ruled that you would not be considered indigent for the purposes of the case file you were seeking to have copied. She then communicated in writing to you that the copying fee would be \$43.00, which was to be provided in advance. When your second written communication on this matter, which was dated August 4th , was received by the Clerk, she contacted Judge Reinke, who also ruled that you

were not to be considered indigent for the purposes of your copying request. Clerk Sudhoff communicated this to you by making a handwritten note on your August 4th letter and returning it to you.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Clerk's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Clerk's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

In this case, you requested copies of certain court records. The APRA provides that public agencies may charge a copying fee under Indiana Code section 5-14-3-8. In most cases, local public agencies may only charge the actual cost, which means the cost of the paper and the cost of running it through the copying machine, for photocopies. Ind. Code §5-14-3-8(d). Public agencies may also request payment in advance for photocopies. Ind. Code §5-14-3-8(e).

There are instances, however, when the General Assembly has provided separate statutory authority for local officials to charge a copying fee different from the actual cost. Ind. Code §5-14-3-8 (f). For county clerks who are providing copies of court records, there is a statute that requires them to charge a fee different from that provided under Indiana Code section 5-14-3-8(d). Under Indiana Code section 33-19-6-1(b), the "clerk shall collect a fee of one dollar (\$1) per legal size or letter size page, including a page only partially covered with writing."¹

The statutory process for claiming indigency in the courts is located at Indiana Code chapter 34-10-1. This statute, while not directly on point concerning the matter presented, has only two brief provisions:

Sec. 1. An indigent person who does not have sufficient means to prosecute or defend an action may apply to the court in which the action is intended to be brought, or is pending, for leave to prosecute or defend as an indigent person.

Sec. 2. If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court shall:

- (1) admit the applicant to prosecute or defend as an indigent person; and
- (2) assign an attorney to defend or prosecute the cause.

All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

In your requests to the Clerk for copies of public records, you asserted that you were unable to

pay for those copies and provided your "affidavit of indigency" in support thereof. The Clerk did consult the judges in her County with respect to your request for indigent status, presumed filed under Indiana Code section 34-10-1-1. In order to be declared indigent for purposes of your public records requests, however, the courts must have affirmatively declared you indigent for the purposes of the proceedings.

It is clear under the facts provided that Clerk Sudhoff did seek the ruling of not one, but two judges in her County concerning your request to be declared indigent for the purposes of obtaining copies of public records from the file numbered 21C01-9710-DF-238. Since neither judge granted your request for indigent status, the Clerk was not obligated to waive the copying fee under Indiana Code section 33-19-6-1(b) and she is entitled to request payment in advance for the copies requested under Indiana Code section 5-14-3-8(e).

CONCLUSION

It is my opinion that the Fayette County Clerk did not violate the Access to Public Records Act by requiring you to pay for the photocopies you requested from her office. Absent any ruling or order from a court providing you with indigent status, the Clerk is not obligated to waive the copying fee.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Melinda Sudhoff,

Fayette County Clerk w/o enclosures

[1](#) Under Ind. Code §33-19-6-1(c), there is authority for the county to lower the copying fee to an amount less than one dollar (\$1) per page. It is evident that Fayette County has not done so.
