

February 14, 2007

Joseph T. Williams-Bey
#910763
Indiana State Prison
P.O. Box 41
Michigan City, IN 46361

Re: Formal Complaint 07-FC-18; Alleged Violation of the Access to Public Records Act by the Elkhart County Clerk and Court Reporter

Dear Mr. Williams-Bey:

This is in response to your formal complaint alleging that Elkhart County Clerk (“Clerk”) and Elkhart County Superior Court Reporter Judy Robinson (“Reporter”) violated the Access to Public Records Act by refusing to give you information. I find that neither the Clerk nor the Court Reporter denied you any records to which you are entitled under the Access to Public Records Act.

BACKGROUND

You state that you requested information from the Clerk and Reporter concerning “the date, month, and year of alleged transcripts of March 2, 3, 4, 2004 and filing date by court reporter.” From what I can discern, you would like to know when the transcript of your mistrial was filed with the Elkhart Superior Court.

The Clerk responded to your complaint via letter. Ms. Stephanie Burgess, Clerk of the Circuit Court, sent the enclosed letter. I also enclose the entire Chronological Case Summary (CCS). Ms. Burgess states that the transcripts you seek are prepared by the court reporter, not the Clerk. Your Notice of Appeal was recently filed on January 18, 2007. The Clerk has fully responded to your requests for records, all of which are noted in the CCS.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A public record is one that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). A public agency is defined generally as an office or agency exercising any part of the executive, administrative, judicial, or legislative power of the state. IC 5-14-3-2(1)(1).

Your complaint against the court reporter is not valid, because the court reporter is not a public agency. Therefore, your complaint against Judy Robinson is without merit. Indeed, if you are attempting to receive a copy of the transcript filed in your appeal, the APRA will not be a mechanism by which you can achieve your goal. The court reporter must prepare a transcript from a recording of your mistrial. The right to a transcription of your mistrial may be a right you have under the appellate rules, but the APRA provides that only records that are created or filed by or with a public agency be available for inspection and copying. Therefore, your complaint that the court reporter has not provided information about a record that has been neither created nor filed with a public agency, is without merit.

Your complaint against the Clerk is also baseless. No party has filed with the Clerk a transcription of the proceeding. All the documents that the Clerk has received for filing are shown on the enclosed CCS. You have not been denied any record by the Clerk.

CONCLUSION

For the foregoing reasons, I find that the Clerk of the Elkhart Circuit Court and the Court Reporter of the Elkhart Superior Court have not denied you a record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephanie Burgess