

January 24, 2002

Mr. Larriante Sumbry  
P.O. Box 41  
Michigan City, IN 46361

Re: *Advisory Opinion 01-FC-78*;

Alleged Denial of Access to Public Records by the Lake Superior Court- Civil Division Room Three.

Dear Mr. Sumbry:

This is in response to your formal complaint, which was received on December 26, 2001. You have alleged that the Lake Superior Court Civil Division Room Three ("Court") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Specifically, you allege that Chief Judge James Danikolas, Lake Superior Court Civil Division Room Three denied you access to public records. Judge Danikolas responded in writing and via telephone to your complaint. Copies of the documents he sent concerning your complaint are enclosed for your reference.

It is my opinion that the Indiana Rules of Trial Procedure apply under the circumstances at issue rather than the Indiana Access to Public Records Act. As a result, it is my opinion that it is beyond the authority of this Office to address the appropriateness of any process or procedure under the jurisdiction of the Indiana Rules of Trial Procedure.

#### BACKGROUND

According to your complaint you in a letter dated December 7, 2001 you requested public records from Judge Danikolas. The records you requested are as follows:

1. Local rules of the court;
2. a motion to proceed as a poor person;
3. the Pro-se Self Help Litigation Manual;
4. Notice of Claim forms
5. a copy Indiana Code section 34-10-1-26; and
6. Pro-se Administrator.

You contend that you were denied access to these records on December 11, 2001, presumably as a result of the letter sent to you by Judge Danikolas. You then filed your formal complaint with this Office on December 26, 2001.

In response to your complaint, Judge Danikolas provided a copy of his December 11, 2001 letter sent to you in response to your public records request. In that letter, Judge Danikolas advised you to contact your court appointed attorney in order to obtain the public records you were seeking. Judge Danikolas further provided in a telephone conversation with me, which he confirmed in letter faxed to me, on January 23, 2002 that "a court does not have to accept pleadings directly from a litigant if that litigant has an attorney of record."

## 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 Court 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 Court 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).

However, the APRA is a law of general applicability, therefore, if no other law applies in a particular situation then the APRA would apply. It is my opinion under the facts as they have been presented the Indiana Rules of Trial Procedure would govern.

Indiana Rules of Trial Procedure Rule 1 provides that:

Except as otherwise provided, these rules govern the procedure and practice of all courts of the state of Indiana in all suits of a civil nature whether cognizable as cases at law, in equity, or of statutory origin.

Although no specific rule address whether a judge is required to respond directly to litigants when those litigants are represented by an attorney, it is clear that all suits that are civil in nature are governed by the Indiana Rules of Trial Procedure. Whether it was proper under the Indiana Rules of Trial Procedure for Judge Danikolas to require you to seek the assistance of your attorney in obtaining the records you requested is beyond the jurisdiction of this Office.

## CONCLUSION

It is my opinion that the Indiana Rules of Trial Procedure apply under the circumstances at issue rather than the Indiana Access to Public Records Act. Since the Office of the Public Access Counselor is limited to addressing issues concerning public access, it is my opinion that it is beyond the authority of this Office to address the processes or procedures under the jurisdiction of the Indiana Rules of Trial Procedure.

Sincerely,

Sandra K. Barger  
Staff Attorney

Enclosure

cc: The Honorable James Danikolas,  
Lake Superior Court, Room Three

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