

June 3, 2003

Larriante Sumbry  
#965137 A-257  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

Re: *Advisory Opinion 03-FC-37*: 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 May 15, 2003. 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. A copy of his written response is 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, in a letter dated May 5, 2003 you requested public records from Judge Danikolas. The records you requested are as follows:

1. Self-help Legal Court Forms;
2. Civil Motion Practice Handbook;
3. Pro-se Manual on How to Represent Yourself;
4. Copy of all preliminary motions, pre-trial motions, discovery procedures in civil litigation;
5. Public Law 133;
6. Copy of Judicial Functions;
7. Civil Right Protections in the United States, Brief Summaries of Constitutional Amendments,

- Federal Laws, Executive Orders;
8. Copy of Pro-Se Litigants Rights per Indiana Constitution;
  9. Copy of Civil Complaints filed in 2003, at least three (3);
  10. Handbook on Indiana Rules of the Court with Instructions for Pro-Se Litigants; and
  11. Staff members of each and every Civil Court in Lake County.

You contend that you were denied access to these records, presumably because seven (7) days had passed and you received no response. You then filed your formal complaint with this Office on May 13, 2003.

In response to your complaint, Judge Danikolas stated that he may have received your May 5<sup>th</sup> request, but as has been his practice, he returns correspondence to you because you have a court-appointed attorney. Judge Danikolas further provided in a telephone conversation with me that it is his position that he is not required to respond directly to a litigant who has an attorney of record and apparently at the time you made your request, you had a court-appointed attorney. Ultimately, Judge Danikolas did respond to each of the eleven (11) items you requested in your May 5<sup>th</sup> request and advised you that his Court has none of the documents you have requested.

## 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).

The APRA is a law of general applicability. 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 rules 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.<sup>1</sup> Ultimately, Judge Danikolas in responding to your formal complaint has now addressed specifically each of the eleven (11) items you requested from his Court and he has informed you, for a variety of reasons, that he has nothing to produce to you in response to your May 5<sup>th</sup> request.

## 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,

Anne Mullin O'Connor

Enclosures

cc: The Honorable James Danikolas w/o enclosure  
Lake Superior Court, Room Three

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<sup>1</sup> This is the second Advisory Opinion written by this Office that has presented the question of whether the Rules of Trial Procedure would prevent Judge Danikolas from responding directly to correspondence that is sent by you, with reference to your court cause numbers. It may be best for you to seek an opinion from the Courts on this issue.