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

August 8, 2014

Laura McCormick
7414 Valley St.
Omaha, NE 68124

RE: *File No. 14-R-118; Douglas County Juvenile Court; Laura McCormick, Petitioner*

Dear Ms. McCormick:

This letter is in response to your email sent to the AGO-Department of Justice website on July 24, 2014, in which you requested our assistance in obtaining "a tape of an open court proceeding" from the Douglas County Juvenile Court. On the day of receipt, the undersigned requested additional correspondence from you, which we received the following day. We considered your correspondence to be a petition for access to records under Section 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Supp. 2013) ("NPRS"). Our findings in this matter are set forth below.

FACTS

According to the documentation we received from you, on July 10, 2014, you emailed Brad Mowrer, the court reporter for Douglas County Juvenile Court Judge Elizabeth Crnkovich, and Raymond Curtis, Douglas County Juvenile Court Administrator. You copied several other individuals. Your email to Messrs. Mowrer and Curtis read as follows:

> This is a public records request pursuant to NE 84 712. The recording was made during a court proceeding open to the public.
>
> I am trying to obtain the tape the court reporter made for the hearing conducted in the FLYNN matter on June 2, 2014. Please provide me a cost for this tape. The document and page number is JV 12 517.

You followed up with another email on July 16, 2014, addressed to the same parties:

> Dear Mr. Mowrer:
>
> I am wondering what the status of my public records request is.
>
> I filed a motion (per Judge Crnkovitch's instructions. I had to go to court to explain why I wanted a transcript of an earlier hearing conducted in this case (even though our law does not require this action on my part). No court rule requires this procedure either.
>
> Judge Crnkovitch denied my request for a transcript. I am now requesting the tape of the hearing that was conducted on my motion. I was seated at the Defendant's table during this hearing. The Docket and Page number as well as the name of the case and the date the hearing was conducted is listed in my public records request.
>
> Please let me know the cost of the tape and when I can pick it up. The proceedings were recorded by the court reporter. I do not have to provide a reason I am requesting the tape, as it is a public record.

You indicate in your various correspondence that you received no response from either Mr. Mowrer or Mr. Curtis.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

Pursuant to 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, "Recording of court proceedings; request for transcription; request for copy of digital recording," 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.
>
> (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.

Neb. Rev. Stat. § 24-1003 (2008) provides, in pertinent part:

> The Supreme Court shall provide by rule for the recording and preservation of evidence in all cases in the district and separate juvenile courts and for the preparation of transcripts and bills of exceptions. Court reporters and other persons employed to perform the duties required by such rules shall be appointed by the judge under whose direction they work. . . .

Neb. Rev. Stat. § 43-2,123 (2008) provides, in pertinent part:

> Each judge of a separate juvenile court shall appoint his or her own court reporter, bailiff, and other necessary personal staff. Each court reporter shall be well-skilled in the art of stenography and capable of reporting verbatim the oral proceedings had in court. . . .

Supreme Court Rule § 1-203, "Duties of court reporting personnel," provides, in pertinent part:

> Court reporting personnel are charged with a duty to comply with any Nebraska Supreme Court rule relating to official court reporters and courtroom clerks and, in accordance with the specific terms of such employment and qualifications, with the duty of making, preserving, transcribing, and/or delivering a verbatim record of all proceedings in the court to which they are appointed in accordance with Neb. Ct. R. App. P. § 2-105. Except as otherwise directed by the State Court Administrator, all digital recordings made by courtroom clerks or other court personnel as defined in § 1-204(A)(4) shall be outsourced for transcription to privately contracted court transcribers who shall meet the minimum qualifications set forth in § 1-204(B)(2). Failure to comply with court rules may result in disciplinary action, including termination, by either the appointing judge or the Nebraska Supreme Court. In addition, court reporting personnel shall

> perform any other duties assigned by the appointing judge and shall, in accordance with the specific terms of such employment and qualifications:
>
> (A) On order of the trial judge, make or have made and file in the clerk's office a typewritten transcription of any trial or proceedings, or any part thereof, without expense to any party to the suit; such transcription shall be a part of the records in the case. An official court reporter or privately contracted court transcriber shall receive from the appropriate governmental unit the compensation specified below in § 1-219 for any such transcription ordered by a judge.
>
> (B) Upon request of counsel or any party to a suit, furnish to such counsel or party, as expeditiously as possible, a typewritten transcription of any trial or proceedings, or any portion thereof. An official court reporter or privately contracted court transcriber shall receive the compensation specified below in § 1-219 for any such transcription, except that when expedited, daily, or real-time delivery is requested, the official court reporter or privately contracted court transcriber and the requesting party may mutually agree to an amount to be paid for delivery of such transcription. Counsel or any party shall make satisfactory arrangements with the official court reporter or privately contracted court transcriber for payment. All work of an official court reporter involved with the preparation of such transcription shall be considered freelance activity subject to § 1-211.
>
> (C) *Upon request of any person not a party to a suit, if so approved by the trial judge, furnish to such person or have prepared for such person, as expeditiously as possible, a typewritten transcription of any trial or proceedings, or any portion thereof. All work of an official court reporter involved with the preparation of such transcription shall be considered freelance activity subject to § 1-211. The compensation and payment therefor shall be as prescribed in § 1-203(B).*

Finally, Supreme Court Rule § 1-210 provides, in pertinent part:

> All shorthand notes, tape recordings, log sheets, or any other material used in making the record in court shall be the property of the trial court and shall, unless otherwise ordered or directed by the judge for whom the record is made, remain in the custody of the court reporting personnel responsible for making such record until such time as that person's employment is terminated, or until disabled or incapacitated.

(Emphasis added.)

DISCUSSION

With these provisions in mind, we will now address whether you have been unlawfully denied access to a public record under the Nebraska Public Records Statutes. As indicated above, by rule the Supreme Court allows a person to request and receive a copy of an audio record of a *county court* proceeding, provided the hearing is not restricted, and a digital recording of the proceeding exists. In order to receive the record, the requester must fill out an approved form, providing information including, but not limited to, case name and number, date, time and location, the presiding judge, and portion of the hearing requested. Other assurances are also required.

In the district and the separate juvenile courts in our state, court reporters are charged with the recording and preservation of evidence in all cases and with preparing transcripts and bills of exceptions. In this regard, the provisions of Supreme Court rule § 1-203 apply. And, as you know, subsection (c) of this rule requires a nonparty to a case to obtain court approval before a transcription of the proceeding is made available to a requester/movant.

The tape recording made by Mr. Mowrer is not a recording in the county court sense, where audio records are made available upon request, when certain conditions are met. Rather, tape recordings assist the court reporter in preparing a complete record of a proceeding. And while it may be in the possession of Mr. Mowrer, the tape recording is the property of the court.

This situation is not unlike the one we addressed in January of this year, when you sought our help in obtaining a transcript of a hearing conducted by Douglas County Juvenile Court Judge Christopher Kelly. In our disposition letter to you, File No. 13-R-143 dated January 3, 2014, we discussed Attorney General Opinion No. 04030 (December 27, 2004), in which we stated:

> Cases from the Nebraska Supreme Court have considered the public's right to access judicial records in two different contexts. [I]n *State v. Cribbs*, 237 Neb. 947, 469 N.W.2d 108 (1991), the court indicated that there is a common-law right of access to judicial records, as recognized by the United State [sic] Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). The *Cribbs* case involved access to psychiatrist reports, medical and mental evaluations and other documents made a part of the official record in a hearing conducted to review the status of a person acquitted of first degree murder on grounds of insanity. *In Cribbs, the court also stated that the common-law right to inspect and copy judicial records is not absolute, but that "'[e]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper*

> *purposes,' such as in divorce cases."* *Cribbs*, 237 Neb. at 950, 469 N.W.2d at 110 (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. at 598). . . .[1]

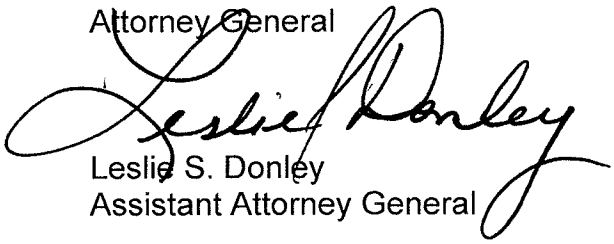
(Emphasis added.) We advised you that it appeared to us that the Supreme Court, by rule, had asserted supervisory power over its records. Consequently, we advised you that "your access to the requested transcript is contingent upon the approval of the court, which will require you to take this matter up again with Judge Kelly." Disposition Letter at 3.

We believe you face the same situation here. Again, because you are not a party to this particular case, your sole recourse is to request a transcription of the tape recording from the court. You are not entitled to a copy of the court reporter's tape recording under the NPRS.

If you disagree with our analysis, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Judge Elizabeth Crnkovich

49-1194-30

---

[1] *See* Op. Att'y Gen. No. 04030 (December 27, 2014) at 1-2.