



ALAN WILSON
ATTORNEY GENERAL

February 28, 2012

The Honorable William R. Johnson
Mayor, Town of Holly Hill
P.O. Box 1108
8807 Old State Road
Holly Hill, South Carolina 29059

Dear Mayor Johnson,

We received your letter requesting an opinion of this Office as to the right of an individual who receives a judgment or sentence in municipal court to obtain a transcript or tape recording of the proceeding for purposes of an appeal. By way of background, you explain that on November 15, 2011, an individual pleaded not guilty to a traffic violation and proceeded to a nonjury trial in municipal court. Unsatisfied with the judge's decision, the individual filed an appeal with the Orangeburg County Clerk of Court. The individual then requested from the clerk of the municipal court a copy of the court's November 15, 2011 transcript. After being informed that the municipal court tape records all court sessions but does not have a transcriber, the individual requested the court's entire November 15, 2011 tape recording which includes other proceedings conducted on that day.

You generally ask whether an individual who appeals a judgment or sentence received in municipal court has a right to obtain either a transcript or tape recording of the proceedings from the clerk of the municipal court. If so, you ask whether such individual is also entitled to transcripts or portions of the tape from other unrelated proceedings upon request. If the answer to either question is in the affirmative, you inquire as to who is responsible for the costs associated with producing copies of these materials.

Law/Analysis

Like magistrates' courts, municipal courts in South Carolina are summary in nature and are not courts of record; thus, court reporters are generally not provided for municipal proceedings. See, e.g., S.C. Code § 22-3-730 ("All proceedings before magistrates shall be summary"); State v. Duncan, 269 S.C. 510, 514, 238 S.E.2d 205, 207 (1977) ("The magistrate's court is not a court of record"). Elletson v. Dixie Home Stores, 231 S.C. 565, 570, 99 S.E.2d 384, 386 (1957) (noting "Municipal Court is not a Court of record," and its proceedings "are of a summary nature and must follow the practice prescribed for Magistrates' Court in South Carolina"). Consistent with Elletson, South Carolina Code section 14-25-45 provides that "[e]ach municipal court shall have...all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Accordingly, this opinion will address the relevant statutory provisions and case law applicable to municipal courts and magistrates' courts in criminal cases and appeals therefrom.

Chapter 25 of Title 14 generally provides for the establishment, powers, duties, and jurisdiction of municipal courts. Section 14-25-195 sets forth the circumstances under which parties in municipal court may use the services of a court reporter or otherwise record the proceedings:

Any party shall have the right to have the testimony given **at a jury trial** in any municipal court taken stenographically or mechanically by a reporter; *provided*, that nothing herein shall operate to prevent any such party from mechanically recording the proceedings himself. **The requesting party shall pay the charges of such reporter** for taking and transcribing if such testimony is recorded by a municipal court reporter.

(emphasis added).¹ It is clear from the language of the statute that the right to have the proceedings taken down by a reporter is available in jury trials to any party that elects to use such services at his own expense. Although nothing in section 14-25-195 indicates the right to use the services of a reporter applies to nonjury proceedings, we believe the language providing any party with the absolute right to otherwise “mechanically [record] *the proceedings* himself” is not so limited in scope.

Criminal procedure in magistrates’ courts is generally governed by Article 7, Chapter 3 of Title 22 of the South Carolina Code. Section 22-3-790 sets forth the manner in which testimony in any criminal case before a magistrate is taken down or otherwise preserved:

In the trial of any case before a magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses except when the defendant waives the taking and signing of the testimony.

In any case before any magistrate in which a stenographer takes down the testimony or in which the testimony is electronically recorded it need not be read over and signed by the witnesses.

S.C. Code Ann. § 22-3-790. In light of the common law and statutory rule that municipal judges have the same duties and follow the same practices prescribed for magistrates in criminal cases, we advise municipal judges to ensure that witness testimony is taken in a manner consistent with section 22-3-790 in all cases where the right to use the services of a court reporter has not been exercised by either party pursuant to section 14-25-195.

Although there is no statutory requirement that municipal and magistrates’ courts mechanically record all proceedings, we note that the Office of Court Administration – the administrative arm of the

¹ Similarly, the South Carolina Summary Court Bench Book, III-76 to III-77, provides:

§ 14-25-195 gives any party the right to have testimony in a jury trial taken stenographically or mechanically by a reporter. If the party does not provide for the mechanical recording of the proceeding himself, but requests the court to do so, he must pay the charges of the municipal court reporter for the taking and transcribing of the testimony. It is not clear what the responsibility of the municipal judge may be when the defendant appeals from the sentence or judgment, and has not provided for the recording himself, or requested the court to do so and a reporter was not present at trial.

Chief Justice – recommends such a practice. See Summary Court Bench Book, V-3 (“The Office of Court Administration recommends that all court proceedings be mechanically recorded”); see also S.C. Const. Art. V, § 4 (Chief Justice is administrative head of judicial system and shall make rules governing administration, practice, and procedure in all courts of the State). Court Administration also instructs that tape recordings of summary court cases be retained for 60 days. Summary Court Bench Book, VIII-85.

State law affords any party the right to appeal a judgment or sentence received in a municipal or magistrate court. § 14-25-95 (notice of appeal along with grounds for appeal must be served on municipal judge or clerk of municipal court within ten days of sentence or judgment); see also § 18-3-30(A) (notice of appeal from criminal case in magistrate court must be filed within ten days of sentence with clerk of circuit court and served upon magistrate). The duties of a municipal judge or a magistrate on appeal are limited to the making and filing of a return with the appellate court. See § 18-7-60 (“court below shall... make a return to the appellate court of the testimony, proceedings and judgment and file it in the appellate court”). This return is the official record of the trial proceedings for purposes of appellate review. See State v. Osborne, 335 S.C. 172, 516 S.E.2d 201 (1999) (noting “magistrate’s return is official record of trial proceedings,” and finding Court of Appeals erred in relying on facts recited in circuit court’s appellate order “instead of restricting itself to the facts contained in the magistrate’s return”) (citation omitted). If the return is inadequate, the appellate court has the statutory authority to compel the municipal judge to provide further information or amend the return. See § 18-7-80 (“If the return be defective the appellate court may direct a further or amended return as often as may be necessary and may compel a compliance with its order”).

The specific duties of a municipal judge with regards to such a return to an appeal are set forth in section 14-25-105:

In the event of an appeal, the municipal judge shall make a return to the Court of Common Pleas, and the appeal must be heard by the presiding judge upon the return. The return of the municipal judge *shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment. When the testimony has been taken by a reporter as provided herein, the return shall include the reporter's transcript of the testimony....*

§ 14-25-105 (emphasis added).

When read in conjunction with section 14-25-195, it is clear section 14-25-105 requires a transcript to be included with the return only when a party in a jury trial elected to have testimony taken down by a court reporter at his own expense. Although no mention is made in section 14-25-105 concerning the inclusion a tape recording with the municipal judge’s return, section 18-3-40 requires magistrates to respond to an appeal from a criminal case by filing “the record, a statement of all the proceedings in the case, and the testimony at the trial as provided in § 22-3-790.” See § 22-3-790 (requiring testimony to be written down and signed by witnesses unless requirement is waived by defendant or testimony is otherwise taken down by reporter or recorded). Thus, *in addition to* the written report of the testimony required by section 14-25-105, we advise municipal judges to supplement their returns with signed witness statements, a transcript, or a tape recording of the proceedings when required by sections 14-25-105 *or* 18-3-40.

There is no requirement that a municipal judge or a magistrate provide a copy of the return directly to a party or his attorney. See, e.g., Joyner v. Glimcher Properties, 356 S.C. 460, 462, 589 S.E.2d 762, 763 (2002) (noting although magistrate has duty to complete return to appeal pursuant to § 18-7-60, “magistrate has no duty to provide a copy of the return to the parties”). However, any party to a suit pending before a circuit court is entitled to inspect or copy papers and materials relevant to his case once they are filed with the clerk of court. See § 14-5-10 (“The circuit courts...shall be courts of record, and the books of record thereof shall, at all times, be subject to the inspection of any person interested therein”); § 14-17-570 (“The clerk...shall at all times permit either party to a suit...to inspect or copy, during the pendency of the suit, any papers pertaining thereto without charge or to furnish on application certified copies thereof on payment of fees per copy sheet”). Accordingly, any party to the appeal has the right to inspect or copy the return once it is filed with the appellate court.

Likewise, there is no statutory duty requirement that a municipal judge or magistrate provide a copy of a transcript or tape recording of the proceedings directly to a party or his attorney for purposes of an appeal. This does not suggest, however, that a party is powerless to obtain copies of such materials. As previously discussed, any party in a municipal jury trial has the statutory right to use the services of a court reporter at his own expense. A party who exercises this right could certainly obtain a transcript directly from the reporter. Presumably, any party in a magistrate court proceeding in which the services of a court reporter are used could do the same. In the alternative, a party who exercises his statutory right in a municipal proceeding to mechanically record the proceedings himself would possess his own tape recording of the proceeding.

Regardless, any member of the public has a general right to inspect and copy judicial records. Article I, section 9 of the South Carolina Constitution provides that “[a]ll courts shall be public” As the South Carolina Supreme Court has observed, “[j]udicial proceedings and court records are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution.” Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006); see also Nixon v. Warner Communications, Inc., 435 U.S. 589, 598, 98 S.Ct. 1306, 1312 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents”); Padgett v. Sun News, 278 S.C. 26, 31, 292 S.E.2d 30, 33 (1982) (summons and complaints “were all required to by law to be filed with the clerk of court and, when so filed, became public records in the course of a judicial proceeding”). The public’s right of access to judicial records is not without limitation, however:

Public access to court records may be restricted in certain situations, such as matters involving juveniles, legitimate trade secrets, or information covered by a recognized privilege. Restrictions may be based on a statute or the court’s inherent power to control its own records and supervise the functioning of the judicial system.

Ex parte Capital U-Drive-It, Inc., 369 S.C. at 10, 630 S.E.2d at 469.

You indicate the municipal court in this case mechanically records all proceedings. Any such tapes in the possession of a municipal or magistrate court, or the clerk of such courts, are presumptively open to the public unless otherwise restricted by a court or by law. Clearly, the issue of whether any such tapes are restricted from public access is a question which must be answered on a case-by-case basis. As we have often stated, “[t]his Office is not a fact-finding entity; investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court.” Ops. S.C. Atty.

Gen., December 21, 2011; September 23, 2011. In the absence of such restrictions, this Office is of the opinion that tape recordings of any proceedings in the possession of a municipal court, magistrate court, or the clerk of such courts should be made available to any member of the public to inspect or copy at a reasonable expense to the requesting party.

Conclusion

This Office is of the opinion there is no requirement under South Carolina law, statutory or otherwise, which requires that a municipal or magistrate court provide a copy of a transcript or tape recording of proceedings directly to a party or his attorney, as a matter of right, for purposes of an appeal. Municipal and magistrates' courts are summary in nature and not courts of record, and thus generally are not provided with court reporters. The manner in which testimony is taken at the trial level is set forth by statute. In a municipal jury trial, any party has the right to use the services of a court reporter at his own expense. In the alternative, a party in any municipal proceeding has the right to mechanically record the proceeding himself. In magistrate court, testimony must be taken down in writing and signed by witnesses unless the defendant waives this requirement, or unless the testimony is otherwise taken down by a stenographer or electronically recorded. Case law and statutory law provide that municipal courts have the same duties and follow the same practices prescribed for magistrates in criminal cases. Thus, in municipal proceedings where no party exercises the right to use the services of a court reporter, we advise municipal judges to otherwise ensure that testimony is taken down in the manner prescribed for proceedings in magistrates' court as set forth above. We further note that Court Administration recommends the practice of mechanically recording *all* court proceedings.

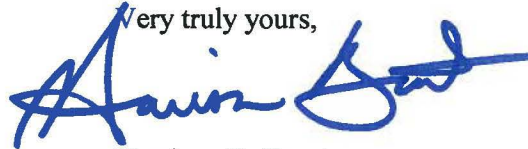
On appeal, the statutory obligations of a municipal judge or a magistrate are essentially limited to the making and filing of a return with the appellate court. This return constitutes the official record of the trial proceedings for appellate review. A municipal judge's return must include "a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment." A transcript of the proceedings must be included with a municipal judge's return only if the services of a court reporter were used at trial. Magistrates are required to file "the record, a statement of the all the proceedings in the case, and the testimony at the trial" as described above. Again, we advise municipal judges to follow the practice prescribed for magistrates. Thus, a municipal judge's return should include the written testimony of witnesses or a tape recording of the proceeding when available. However, municipal judges and magistrate have no duty to provide a copy of the return directly to the parties involved.

Regardless of the above, State law does provide mechanisms by which a party may obtain a transcript or tape recording of a municipal or magistrate court proceeding. First, a party in a municipal jury trial who exercises his statutory right to use the services of a court reporter at his own expense could then obtain a transcript directly from the reporter. The same conclusion would presumably apply in any magistrate court proceeding in which the testimony is taken down by a stenographer. Furthermore, any party in a municipal proceeding who exercises his right to mechanically record the proceedings himself would have his own tape recording of the proceeding. Second, any party to a suit pending before a circuit court – the court with appellate jurisdiction over appeals from municipal and magistrate courts – has the statutory right to inspect or copies relevant papers in the possession of the clerk of court. Thus, any party to such an appeal has the right to inspect or copy the return of a municipal judge or a magistrate once it is filed with the appellate court.

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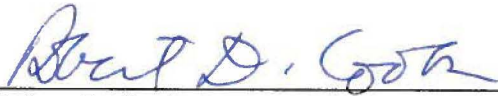
Third, judicial proceedings and court records are presumptively open to the public unless access is otherwise restricted by a court or by law. Where no such restrictions exist, any member of the public has the right to inspect the records of a court or obtain copies of such records at his own expense. This presumption of access would apply to situations where, as here, a municipal court retains copies of tape recordings of all its proceedings. Accordingly, we are of the opinion a municipal or magistrate court must allow a party to an appeal, as a member of the public, the right to inspect or copy tape recordings of *any* proceedings which are not otherwise subject to some applicable restriction. Copies should be made at a reasonable expense to the requesting party based on the actual costs of producing such copies.

Very truly yours,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



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