

BEFORE THE MISSISSIPPI ETHICS COMMISSION

GIACOMO BOLOGNA

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-20-006

GRENADA COUNTY CIRCUIT CLERK

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Giacomo Bologna against the Grenada County Circuit Clerk (the “circuit clerk”). The circuit clerk filed a response to the complaint. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. In accordance with Rule 5.6, Rules of the Mississippi Ethics Commission, the hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on June 5, 2020. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 On January 23, 2020, Giacomo Bologna called the Grenada County Circuit Clerk’s Office to “ask about access to public records from a criminal case that was handled in the Grenada County Circuit Court.” He was informed that the circuit clerk charges a \$10 fee to search for records, a \$1 fee for each page of paper mailed to a requester and a \$3 fee for each page emailed to a requestor. Mr. Bologna alleges these fees violate the Public Records Act.

1.2 In response, Michele Redditt-Garcia, the Grenada County Circuit Clerk, states in response:

My office customarily charges between one dollar (\$1.00) and three dollars (\$3.00) to mail or email court documents to individuals requesting such documents. These fees are charged to cover the costs of paper, ink, use of our copies – under our lease agreement, our copier supplier charges us a fee for each copy or scan made – envelopes, and postage

My office also customarily charges ten dollars (\$10.00) for a general search of court documents – this fee is charged to cover staff time but is typically waived when a specific document is request. Our office is not a member of the Mississippi Electronic Courts, meaning that any documents that are mailed or emails must be manually removed from the original court file and then copied or scanned.

I believe these fees to be reasonable in light of the Mississippi Public Records Act of 1983; however, it is not my office’s intention to deny anyone access to any public court documents.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection by any person unless otherwise provided by law and places a duty upon public bodies to provide access to such records. Section 25-61-2 and Section 25-61-5. “Public records” are defined as all documents or records “having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body.” Section 25-61-3(b).

2.2 The court files maintained by the circuit clerk are public records, and the clerk’s office must provide Mr. Bologna reasonable access to these files. The Mississippi Public Records Act allows a public body to “collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records.” Section 25-61-7(1). “Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request.” *Id.* As a result, the flat \$10.00 charge the circuit clerk charges for a search of records may be reasonable, so long as this fee does not exceed the actual cost of the search and review, calculated using the pay scale of the lowest level employee or contractor competent to respond to the request. The circuit clerk did not provide information sufficient to make that determination.

2.3 Section 25-7-13 clearly and specifically sets out the applicable fees circuit clerks shall charge for certain services, including the provision of copies of documents. Pursuant to Section 25-7-13(2)(f), the circuit clerk is required to charge fees for providing copies of records on file in the clerk’s office:

(2) ...[T]he clerks of the circuit courts shall charge the following fees:

...

- (f) Furnishing copies of any papers of record or on file and entering marginal notations on documents of record:
 If performed by the clerk or his employee, per page.....\$1.00
 If performed by any other person, per page.....\$.25

(emphasis added). See also, Tom v. Madison County Circuit Clerk, Public Records Case No. R-18-029. As such, the \$1.00 per page charged by the circuit clerk for documents mailed to requestors may be permitted, so long as the copies are furnished “by the clerk or his employee.” A charge of \$.25 per page is authorized whenever a member of the public copies or prints a document on file with the circuit clerk’s office. However, the \$3.00 charge per page for documents emailed by the circuit clerk is clearly not warranted by the statute.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the Grenada County Circuit Clerk violated Section 25-61-7 of the Mississippi Public Records Act by charging \$3.00 per page for responsive documents emailed to public records requestors.

3.2 The Ethics Commission orders the Grenada County Circuit Clerk to revise the fee schedule to strictly comply Section 25-61-7 and 25-7-13 and to provide the requested records at the actual cost as described above.

SO ORDERED, this the 17th day of June, 2020.

TOM HOOD, Executive Director & Chief Counsel
Mississippi Ethics Commission