

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHELLE NICKLAS, JOHN)
ROES (1-50), and JANE ROES (1-)
50),)

Plaintiffs,)

v.)

JOE KELLY, individually and in his)
official capacity as the LANCASTER)
COUNTY ATTORNEY, and JOHN)
DOES (1-50), individually and in)
his/her/their official capacity,)

Defendants.)

4:17CV3131

**MEMORANDUM
AND ORDER**

Plaintiff has filed a Motion for Temporary Restraining Order, or, in the Alternative, Motion for Preliminary Injunction (Filing [15](#)). Keeping in mind the factors set forth in [Dataphase Systems, Inc. v. CL Systems, Inc., 640 F.2d 109 \(8th Cir. 1981\)](#), the motion shall be denied for three reasons:

1. Plaintiff has made no showing that she has appealed the denial of her application to participate in the Lancaster County Adult Diversion Program pursuant to the Administrative Review Guidelines contained in the Eligibility Criteria and Program Conditions document.¹ (Filing [15](#), at CM/ECF p. 17.)

¹Plaintiff's attorney was specifically advised by letter dated May 25, 2017, that Plaintiff's application to enter the program was denied, that the "alleged facts ma[d]e this case inappropriate for the diversion program," and that Plaintiff had the right to appeal the decision pursuant to the instructions described in the letter.

2. According to the Eligibility Criteria and Program Conditions document, the crime with which Plaintiff is charged (child neglect) is considered an “eligible misdemeanor” to be considered “on a Case-by-Case Basis,” and the document expressly grants the prosecutor discretion to decide who may enter the program. (Filing [15](#), at [CM/ECF p. 15](#) (“The County/City Attorney reserves the right to consider each case on an individual basis to determine eligibility.”).)
3. The Community Corrections Diversion Program Agreement (Filing [15](#), at [CM/ECF p. 18](#)) was not signed by the “County/City Attorney,” as explicitly required by the Agreement itself.

Accordingly,

IT IS ORDERED:

1. Plaintiff’s Motion for Temporary Restraining Order (Filing [15](#)) is denied;
2. If Plaintiff still demands a preliminary injunction hearing, Plaintiff’s counsel shall conduct a telephone conference with opposing counsel and my administrative assistant, Kris Leininger, in order to schedule such hearing.

DATED this 8th day of November, 2017.

BY THE COURT:
s/ Richard G. Kopf
Senior United States District Judge