

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-027

RESPONDENT: Justice Cindy Bourland; Third Court of Appeals
Justice Robert Pemberton; Third Court of Appeals

DATE: March 13, 2018

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge David Evans; Judge Kelly G. Moore

Petitioner requested from Respondents copies of campaign contribution reports, records regarding donations made to a specific organization, prior communications related to a specific case filed with the Third Court of Appeals (the “Court”), and prior communications sent to Respondents email addresses from Petitioner. Respondents did not reply and Petitioner filed this appeal.

In their response to this appeal, Respondents indicated that they did not receive Petitioner’s request because the Court asked the Office of Court Administration to re-route emails sent from Petitioner’s email address and automatically generate a “bounce-back response” to the email informing Petitioner of the Court’s procedures for submitting records requests. Respondents noted that the rerouting of Petitioner’s emails was instituted because of Petitioner’s “history of persistent attempts to communicate by email with judges assigned to his cases.”

The Court’s records request procedures require that requests be submitted to the records custodian by regular mail to the Court’s mailing address or by email to an email address created specifically for this purpose. Respondents argue that this centralized system of receiving records requests is “intended to minimize direct litigant communication with the judges and to ensure that document requests can be responded to in an orderly manner.”

Rule 12 requires that requests for records “be sent to the records custodian and not to a court clerk or other agent for the records custodian.” Rule 12.6(a). The procedures instituted by the Court do not preclude a requestor from complying with this requirement. Requests still may be addressed or directed to the appropriate records custodian even though they are delivered to the dedicated email address. We conclude that a policy requiring that records requests be sent by regular mail or submitted to a dedicated email address is not unreasonable and does not violate Rule 12.

The Court informed Petitioner of its procedures in August of 2017. Additionally, when Petitioner attempted to deliver emails directly to the Respondents’ email addresses, the Court’s email system sent automatic responses to Petitioner explaining the Court’s procedures. Further, Petitioner has not demonstrated that he complied with the Court’s procedures. Respondents did not receive Petitioner’s request because Petitioner did not comply with the Court’s procedures regarding the submission of records requests. Because they did not receive the requests they were not required to respond. Accordingly, the appeal is denied.

Though Respondents were not required to respond to Petitioner's requests, they included a response in their reply to this appeal. Rather than require Petitioner to resubmit his request to Respondent's and then file another appeal, in the interest of justice we have reviewed Petitioner's request and the response in this decision.

A "judicial record" subject to Rule 12 is one that is "made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." Rule 12.2(d).

Campaign contribution reports, are not "judicial records" as defined by Rule 12 because they are not made or maintained by or for a court or judicial agency in its regular course of business. *See* Rule 12 Decision No. 12-009. Similarly, records of donations made to private organizations by judges are not records that are made or maintained by or for a court or judicial agency in its regular course of business. Therefore, we conclude they also are not "judicial records" under Rule 12. Additionally, communications related to specific cases filed with a court are not subject to Rule 12 because they are case records, not "judicial records" as defined by Rule 12.2(d). *See* Rule 12 Decision No. 00-001. Accordingly, this committee is without authority to issue a decision regarding the denial of a request for copies of campaign contribution reports, records regarding donations made to a private organization, or communications related to a specific case filed with the Court.

We next address Petitioner's request for copies of prior communications sent by Petitioner to Respondents email addresses. In their response to this appeal, Respondents note that they have previously provided all responsive records to Petitioner in response to another Rule 12 request. The only other document responsive to the request was included in Respondent's response. There being no other records responsive to the request, Respondents have complied with Rule 12 and the appeal is denied.