

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO: 21-002s

RESPONDENT: Office of Court Administration

DATE: May 17, 2021

SPECIAL COMMITTEE: Judge Dean Rucker, Chairman; Judge Missy Medary;
Judge Billy Ray Stubblefield; Judge David L. Evans;
Judge Sid Harle

The request for records at issue in this appeal is the same as the one addressed in Rule 12 Appeal No. 21-002. The request was for any emails sent to the email domain for Respondent (TXcourts.gov) from an email address attributed to a named presiding judge (“Presiding Judge”) that mentioned the Petitioner’s name or any variations of his name for the period January 1, 2019 through January 7, 2021. Petitioner further requested any emails sent from the email address attributed to the Presiding Judge that mentioned Petitioner’s name or any variants of Petitioner’s name for the same period. The request was emailed to Respondent’s general counsel and copied to more than a dozen judicial agency officials, the Presiding Judge, other presiding judges of the administrative judicial regions or their support staff, a former regional presiding judge, an Office of Court Administration staff person, and the Chief Justice of the Texas Supreme Court.

Counsel for Respondent sent a response to Petitioner stating that because (1) Petitioner had requested records from Respondent’s email domain, (2) the email domain was maintained by Respondent, and (3) none of the individuals copied on the request were the custodians of the records responsive to the request, Respondent would be the sole respondent to Petitioner’s request. Respondent denied Petitioner’s request arguing they were not “judicial records” as defined by Rule 12.2(d) or, if they were subject to Rule 12, they were exempt from disclosure under Rule 12.5.

Petitioner then filed Appeal No. 21-002 arguing that the Presiding Judge, and not Respondent, was the proper custodian of the records sought and that the Presiding Judge had failed to respond to his request. In addressing the merits of Petitioner’s appeal, the special committee observed that Rule 12 demanded good faith and reasonableness in replying to records request and the special committee concluded that Respondent reasonably interpreted Petitioner’s request to be directed to Respondent and made a good faith effort to respond to Petitioner as sole custodian of the records sought. Because Petitioner had failed to appeal Respondent’s denial of the Petitioner’s request for records, the special committee provided Petitioner the opportunity to appeal Respondent’s denial of his request.

Following the issuance of Appeal No. 21-002, Petitioner initiated a supplemental appeal of the named Respondent’s denial of records. Although Respondent provided for our *in camera*

review copies of the records maintained by Respondent responsive to the request that were withheld from Petitioner, Petitioner subsequently maintained in materials submitted to the special committee that Petitioner's appeal does not, in fact, concern the records withheld by Respondent. Because of this, we will not address whether the records withheld by Respondent are subject to or exempt from Rule 12. What Petitioner functionally raises in the materials submitted to the special committee as an "appeal" is a request for reconsideration of its conclusion in Rule 12 Appeal No. 21-002 that Respondent, and not the Presiding Judge, is the appropriate respondent of the records sought.

A decision of a special committee under Rule 12 is not appealable. Rule 12.9(m). Nevertheless, in reviewing the materials submitted to the special committee for its consideration in both Appeal No. 21-002 and this supplemental appeal, the special committee finds it furthers Rule 12 policy to address the status of the named respondent. In Respondent's January 15 email to Petitioner, Respondent indicated that it would be the only respondent to Petitioner's request. In a January 27 follow-up email to Petitioner, Respondent further stated that because "any record of an email sent from [the email address specified by Petitioner] would be identical to the record of the email received at txcourts.gov[,] [t]here [would be] no harm (or rule violation) in [Respondent] responding to a request for records over which it has custody even if another party may have possession of *identical* records" (emphasis added). We again acknowledge that Respondent reasonably interpreted Petitioner's request to be directed to "TX Courts" *in toto*, and that Respondent made a good faith effort to respond to Petitioner as the sole custodian of all records sought in the request. However, in the interest of efficient resolution of this records request and in furtherance of Rule 12's purpose, the special committee requests that Respondent forward the Petitioner's original request to the Presiding Judge as provided by Rule 12.6(f) for a reply or confirmation whether he has emails other than those sent to or received by the TXcourts.gov domain responsive to Petitioner's request.