

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 02-001

RESPONDENT: Administrative District Judge Jerry Calhoon

DATE: June 7, 2002

SPECIAL COMMITTEE: Judge John Ovard, Judge B. B. Schraub, Judge Olen Underwood, Judge Darrell Hester, Judge Jeff Walker

The applicant requested records from the constitutional county judge and from the county auditor related to an investigation and consultation billed to the county and paid for with county funds. The request was denied by the county judge, and the auditor stated that she had no such records. The applicant then requested the same information from Judge Jerry Calhoon, who was both district judge of the 349th judicial district and also the administrative district judge, individually, and as supervisor of the County Auditor, and County Judge. The applicant also acknowledged that Judge Calhoon did not have the records, but stated that his employees in the auditor's office did have such records.

Judge Calhoon replied that he had no such records, and that he was not required to answer questions propounded in the request. The applicant has filed a petition for review. In his response to the petition, Judge Calhoon correctly states that the employees in the county auditor's office and the county judge are not his employees and are not under his supervision or control.

Judge Calhoon does not have the records in his possession or under his control, and has not denied access to those records. Pursuant to Rule 12.6(f), he should have attempted to ascertain who the custodian of the records was, referred the request to that person, and notified the requestor in writing of such referral. If he could not ascertain who had custody of the records, he should have notified the requestor in writing that he was not the custodian of the record and could not ascertain who the custodian was.

Because Judge Calhoon was not the custodian of the requested records, he did not deny access, so we can neither grant the petition nor sustain the alleged denial of access.