

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 00-006

RESPONDENT: Associate Judge Patricia A. Macias

DATE: October 25, 2000

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

The applicant requested visiting judge records for Associate Judge Patricia Macias of the 65th Judicial District Court children's court. The applicant first requested the records from the judge of the 65th district court. The district judge responded that he had no records of visiting judges to Judge Macias's court, and that the applicant should contact Judge Macias's court for those records. The applicant then requested from Judge Macias records showing the dates she had a visiting judge in the 65th district court children's court from 1997 to the present, and also future dates scheduled for a visiting judge.

Judge Macias provided information from July 12, 2000 to the present, but gave no explanation of the limitation of documents to a three-month period of time rather than the four years requested. When questioned about this by the applicant, Judge Macias's court coordinator wrote a letter which provided in its entirety as follows:

“We are in receipt of your letter dated today, October 2, 2000. The information provided to you is complete.”

The applicant requested clarification as to whether there were no visiting judges before July 12 of this year; or whether there were such records, but Judge Macias did not have them. The court coordinator wrote a letter which provided in its entirety as follows:

“We are in receipt of your letter dated October 3, 2000. The information provided to you on October 2, 2000 is complete.”

The applicant filed a petition for review, and asked that it be expedited because the respondent is a candidate for election to the district court bench in the November 7, 2000 election. We granted the application for expedited review. Judge Macias responded to the petition by stating that she had provided all documents in her possession to the applicant, and that the statute does not require the creation of records to satisfy a Rule 12 request.

The documents are “judicial records” within the definition of Rule 12.2(d). The applicant contends that

Judge Macias violated Rule 12.8(c) by failing to inform her of the reason for denial of access to visiting judge records, by failing to inform her of her right to appeal under Rule 12.9, and by failing to include the name and address of the administrative director of the Office of Court Administration. Because Judge Macias has no records other than those provided, then she technically has not denied access to those records, and she was not required to provide the Rule 12.8(c) information. Nevertheless, the better and more accommodating practice would have been for her to include that information in her responses.

Rule 12.6(f) establishes the required course of conduct for a judge who is not the custodian of the requested records:

“(f) Recipient of Request not Custodian of Record. A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. . . . If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.”

Regarding the records of visiting judges before July 2000, Judge Macias did not refer the request to the proper custodian or notify the applicant that she could not ascertain the identity of the custodian; she therefor failed to comply with Rule 12.6(f) in any of her responses.

The applicant requests that this committee take appropriate measures under Rule 12.10 to avoid future violations of the rule. Rule 12.10 provides that a records custodian who fails to comply with Rule 12, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct. This committee cannot enforce the Code; that is the function of the State Commission on Judicial Conduct.

Because Judge Macias had no additional records that are responsive to the request, then she did not deny access, so we can neither grant the petition nor sustain the alleged denial of access. We find that the responses to the request did not comply with Rule 12.6(f), but we are confident that Judge Macias will promptly correct this failure to comply.