

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-001

RESPONDENT: Montgomery County Office of Court Administration

DATE: March 17, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield; Judge David Peebles; Judge Dean Rucker; Judge David Evans

Petitioner requested from Respondent “the monthly and annual statistical analysis, calculations, and presentations for each of the seven district courts in Montgomery County for the following information: cases pending, cases filed, motions to revoke, cases reactivated, all other cases added, total incoming, total cases pending, cases disposed, cases placed on inactive, total outgoing, cases pending end month, clearance rate percentage, time to disposition, average days to disposition for all criminal, juvenile, family, and civil cases in each court for each month and year of 2012, 2013, 2014, and 2015.” He also requested “certified stenographic recorder data showing time each certified stenographic recorder machine” was used on a daily basis for each month and year from 2012 to 2015. Respondent denied Petitioner’s request claiming the statistical court data was exempt under Rule 12.5(f) and that Respondent was not the custodian of the records maintained on the stenographic recorders. Petitioner then filed this appeal.

In its response to the petition, Respondent states that it was directed to prepare the statistical reports and that they are used to assist the judges in reviewing their case data to ensure the data were successfully migrated from an old case management system to a new one. Respondent also argues that the reports are “designed to present information in a manner that will assist the judges in reviewing case load data and in decision making related to judicial administration.” Relying on Rule 12 Decision No. 05-003, Respondent maintains that this information is exempt from disclosure under Rule 12.5(f) as a “record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration.” Petitioner provided for our review a copy of a report like the ones he requested that had been prepared for the district judges in Montgomery County but that he obtained from someone other than Respondent. If the sample provided by Petitioner is an accurate depiction of the reports prepared by Respondent that are responsive to Petitioner’s request, Rule 12 Decision No. 05-003 does not support Respondent’s conclusion. The responsive records in Rule 12 Decision No. 05-003 were reports prepared by a consultant who had analyzed court data and provided conclusions regarding the data. The reports at issue in this appeal contain case data reflecting the number of cases filed, cases disposed, motions to revoke as well as clearance rates and other information regarding case disposition statistics. The reports do not contain any analysis, recommendations or discussion related to the data. They are simply a tally of the number of cases in a particular category or the number of days that have elapsed between actions and charts depicting the same information. Accordingly, we conclude that the reports at issue in this appeal are not related to the internal deliberation of a court or judicial agency or among judicial officers on matters of court

administration and are not exempt from disclosure under Rule 12.5(f).

The records at issue in this appeal are more like those addressed in Rule 12 Decision No. 15-002. Those records reflected the number of truancy cases filed in the courts against certain individuals for a specified period of time. They were reports of aggregate data that were prepared for submission to the Office of Court Administration (OCA) pursuant to rules promulgated by the Texas Judicial Council. The Special Committee determined that they were not exempt from disclosure. Though Respondent acknowledges that the information in the reports at issue in this appeal contain the same information included in publicly available reports prepared by the district clerk for submission to OCA, it maintains that the reports it has prepared can be distinguished. We disagree. Though the reports requested by Petitioner were created for a purpose other than for submission to OCA and provide data by court rather than aggregate data for the whole county, the information in both types of reports is essentially the same. For the reasons stated above and in light of the Rule 12 directive that it should be liberally construed to achieve its purpose, we conclude that the requested reports should be released.

Petitioner also requested certified stenographic recorder data. In his Petition, Petitioner refers to this as “metadata from stenographic recording machines” and alleges that seven of the eight stenographic machines in use by the district courts’ court reporters are owned by the county. Respondent replied that it is not the custodian of the stenographic machines and that it is unable to ascertain who the custodian is. A judicial record that is 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.” Rule 12.2(d). “The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge.” Rule 12.2(e)(1). Records created on a stenographic recorder in the courtroom are made or maintained for a court in its regular course of business; however, these records often relate to a court’s adjudicative function and are not judicial records as defined by Rule 12. If the information requested by Petitioner is a “judicial record” subject to Rule 12, the records custodian would be the judge of the court in which the stenographic recording machine was used. Because Respondent, based on the uncertainty of who the custodian of records maintained on a stenographic recorder is, did not address whether the requested information exists, and if it exists, whether it is a “judicial record” that is subject to Rule 12, and if it is subject to Rule 12, whether it is exempt from disclosure, we give Respondent leave to submit its arguments on behalf of the judges for our consideration.

In summary, we grant the petition regarding the statistical reports requested by Petitioner, a sample of which was attached to Petitioner’s appeal. We also give Respondent leave to address whether the requested stenographic recorder information exists, and if it exists, whether it is a “judicial record” that is subject to Rule 12, and if it is subject to Rule 12, whether it is exempt from disclosure.