

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-005

RESPONDENT: Bryan Municipal Court

DATE: July 18, 2017

SPECIAL COMMITTEE: Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Billy Ray Stubblefield; Judge Missy Medary; Judge David L. Evans

Petitioner requested from Respondent a certified copy of a file maintained by the Bryan Municipal Court regarding a specific traffic case. Respondent denied Petitioner's request citing the holding in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306 (1978) that the "decision to release judicial records is within the discretionary authority of the trial court." Respondent gave no other reason for the denial. Petitioner sent a subsequent letter to Respondent requesting reconsideration of the denial and explaining Petitioner's understanding of the law related to access to court records, but Respondent denied this request as well. Petitioner then filed this appeal. Though provided an opportunity to respond to this appeal, Respondent has failed to do so.

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). (Emphasis added.)

The records requested by Petitioner were created and filed in connection with a traffic case adjudicated by Respondent. Therefore, they are not "judicial records" as defined by Rule 12.2(d) and they are not subject to Rule 12. *See* Rule 12 Decision No. 00-001.

Because the records at issue are not judicial records under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.¹

While we are without authority to decide appeals from denials of case records, the increase in Rule 12 appeals from denials of requests for case records compels us to remind judges that though case records are not subject to Rule 12, the public has a right to inspect and copy them. The 5th

¹ We note, however, that case records or court records which are not "judicial records" within the meaning of Rule 12 may be open pursuant other law, such as the common-law right to public access, and to other process (such as mandamus). *See* Rule 12 Decisions No. 00-001 and 00-003. We also note that the primary significance of a decision finding that a record is not subject to Rule 12 is that the Rule 12 procedures for responding to requests and appealing the denial of requests do not apply. Neither the fact that a record is not subject to Rule 12 nor a decision making this determination should be used as a basis for withholding records.

Circuit in *Test Masters Educ. Servs. Inc., v. Robin Singh Educ. Servs., Inc.*, 799 F.3d 437, 454 (5th Cir. 2015) explained as follows:

The public has a common-law right to inspect and copy judicial records. *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993) (citations omitted). That right "is not absolute." *Id.* "Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Id.* (citation and quotation marks omitted). Examples of an improper purpose recognized by the Supreme Court include using records "to gratify private spite or promote public scandal . . ." *Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 598, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) (citations and quotation marks omitted).

In exercising its discretion, a district court must "balance the public's common law right of access against the interests favoring nondisclosure." *Van Waeyenberghe*, 990 F.2d at 848. In *Van Waeyenberghe*, we held that a district court abused its discretion by sealing judicial records. *Id.* at 849. We reversed based on a lack of "evidence in the record that the district court balanced the competing interests prior to sealing the final order." *Id.*

We remind judicial officers to engage in this analysis when determining whether to deny public access to court records.