

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 21-005

RESPONDENT: 218th Judicial District Court
Judge Donna Rayes

DATE: April 23, 2021

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield, Judge David Evans, Judge Ana Estevez, Judge Alfonso Charles

Petitioner requested from Respondent copies of emails or notes sent or received by Judge Rayes, an assigned judge serving on a case in the 218th Judicial District Court (herein “Court”), or Court personnel that mentioned specific named individuals and were sent to or received from a specific list of email addresses or any other email address. Petitioner also requested telephone records that demonstrated calls or text messages sent to or received by specific individuals and telephone numbers and notes taken during telephone calls from the phone used by Judge Rayes to communicate about court matters. The judge of the Court in his capacity as local administrative district judge denied Petitioner’s request asserting they were exempt under Rule 12.5 of the Rules of Judicial Administration. Petitioner then filed this appeal.

We first address the issue of who the appropriate respondent is in this appeal. Originally, Judge Rayes was identified as the sole respondent.¹ Upon further review and the fact that Petitioner’s request involves emails sent or received by Court staff, it is our opinion that the Court is also a proper respondent in this case. The Office of Court Administration sent correspondence regarding this appeal to Judge Rayes in care of the local administrative district judge at the Court’s email and physical addresses but neither Judge Rayes nor the Court submitted a response to the petition. Because the Court was not originally listed as a respondent and to ensure that we consider any exemptions that apply to the responsive records, we grant the Court 14 days from the date of this decision to provide a response if the Court desires to do so.

Next, we address the issues raised by Petitioner. The special committee’s authority under Rule 12 is limited to the review of the denial of access to judicial records as defined by Rule 12. Rule 12.2(d) defines a judicial record as one that is “made or maintained by or for a court or

¹ Assigned judges serve many courts and in some instances may be considered custodians of the records that they create and maintain separately from the courts they serve.

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.”

Based on our review of the petition, it appears that Judge Rayes was assigned to serve on a case in which Petitioner is a party and that the records Petitioner seeks are emails, telephone records, and notes reflecting communications or calls sent or received by Judge Rayes and Court staff and the attorneys and staff who represent another party in the same case. We have reviewed the sample email provided by Petitioner and conclude that it is related to the case in which Petitioner is a party. Thus, the sample email and any similar emails or notes related to Petitioner’s case pertain to the Respondents’ adjudicative function and are not covered by Rule 12.

If responsive emails or notes exist that were made or are maintained by Respondents or Court staff and do not pertain to the Respondents’ adjudicative function, they would be subject to Rule 12 and should be released unless they are exempt from disclosure. In the Court’s denial of Petitioner’s request, the Court asserted that the requested records were exempt from disclosure under Rule 12.5 but did not provide any specific exemptions. Without additional information or copies of the responsive documents we are unable to confirm whether they are exempt from disclosure. Accordingly, we must conclude that any responsive emails or notes made or maintained by Respondents or Court staff that do not pertain to Petitioner’s case or Respondents’ adjudicative function should be released. If they contain information that Respondents believe is exempt from disclosure, we give the Court 14 days from the date of this decision to submit a written response specifying the exemption claimed and to tender the judicial records for our *in camera* review.

We next address Petitioner’s request for telephone records. Prior Rule 12 special committees have concluded that telephone records are subject to disclosure under Rule 12. *See* Rule 12 Decision Nos. 11-009 and 11-017. If Respondents are the custodians of these records they should be provided to Petitioner. If they contain information that is exempt from disclosure under Rule 12, we give the Court 14 days from the date of this decision to submit a written response specifying the exemption claimed and to tender the judicial records for our *in camera* review. If Respondents are not the custodians of these records and Respondents can ascertain who the records custodian is, Respondents should refer Petitioner’s request to the proper records custodian. *See* Rule 12.6(f).

In summary, the petition is granted in part and Petitioner should be provided the requested records if they are not related to a case or the Respondents’ adjudicative function. In the event that portions of the responsive records are exempt, the Court may submit them for our *in camera* review. If Respondents are not the custodians of the requested telephone records but can ascertain who is, they should forward Petitioner’s request to the appropriate records custodian.