

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 23-003

RESPONDENT: 231st District Court, Tarrant County

DATE: July 7, 2023

SPECIAL COMMITTEE: Judge Dean Rucker, Chair; Judge Ray Wheless;
Judge Dib Waldrip; Judge Sid Harle; Judge Susan Brown

On April 19, 2023 Petitioner submitted to Respondent a request for the following records:

- “all emails, texts, and instant messages to and from [the Judge of the 231st District Court] that contain” certain keywords exchanged between November 1, 2022 and April 19, 2023;
- “all emails, texts, and instant messages between [the Judge of the 231st District Court]” and certain persons exchanged between November 1, 2022 and April 19, 2023; and
- the date of the “furthest scheduled out hearing” at the court.

Two days later, on April 21, Petitioner submitted a supplemental request to Respondent seeking “the order referenced in [item] number 30” of an attachment sent with the request. The attachment — part of the factual recitation in an untitled Findings of Fact and Conclusions of Law — bore notations left by Petitioner highlighting item number 30, which reads as follows: “On March 21, 2023, the Court ordered that [attorneys to the case] appear on March 29, 2023 at 9:00 a.m. with orders on the Request for Relinquishment and the Motion for Enforcement.” Petitioner circled the word “ordered” in item number 30. In reply to Petitioner, Respondent informed Petitioner that it did not have any judicial records responsive to the set of “emails, texts, and instant messages” requests, provided Petitioner with the furthest court date scheduled, and attached to the court’s message a March 29 Order on Request for Court to Relinquish Continuing Exclusive Jurisdiction. Petitioner filed a timely appeal contesting Respondent’s answers, but Respondent did not provide a reply to the petition for the special committee’s consideration.

We first consider Petitioner’s April 19 request for which Respondent provided Petitioner with information responsive to the court date scheduling request and indicated it did not have records responsive to the “emails, texts, and instant messages” requests. On appeal, Petitioner contends that Respondent is “misusing its interpretation of ‘judicial records’ to withhold communications.” However, nothing submitted to the special committee supports Petitioner’s allegation. If a requested record does not exist, a Respondent’s inability to produce the requested record is not a denial of access to judicial records under Rule 12. See Rule 12 Dec. No. 17-015.

There being no withheld documents responsive to the request for consideration, the appeal on the April 19 request is dismissed.

We next consider Petitioner's April 21 request, for which Respondent provided Petitioner a March 29, 2023 Order on Request for Court to Relinquish Continuing Exclusive Jurisdiction. On appeal, Petitioner wrote that the "order" provided to Petitioner was not the order Petitioner requested and was not related to Petitioner's request. What was sought, Petitioner wrote, was "a court document that described a March 21 order by [Respondent] that two attorneys appear on March 29[.]" Rule 12 governs access to judicial records, and Rule 12.2(d) defines a "judicial record" as 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." Additionally, "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." Such records are case records. *See* Rule 12.2(d) and Rule 12 Decision No. 00-001. Petitioner's request, by its own terms, would be for a record "created, produced, or filed" in connection with a matter on Respondent's docket, would be a "case record" and not a "judicial record," and therefore would not be subject to Rule 12. Even if Respondent submitted the incorrect document to Petitioner, the special committee has no authority under Rule 12 to issue a decision regarding access to records that are not subject to Rule 12.

Accordingly, the appeal is dismissed.