

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-011

RESPONDENT: The Honorable Greg Magee, Justice of the Peace, Precinct 4,
San Jacinto County

DATE: July 20, 2010

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard, Judge
David Peeples, Judge Kelly G. Moore, Judge Jeff Walker

Petitioner requested a copy of Respondent's court dockets from 2002 to 2010. If these could not be released, Petitioner asked that Respondent provide a copy of his calendar with dates of his court hearings and their location. Respondent denied the request stating that neither the court dockets nor the requested calendar are judicial records subject to Rule 12. Petitioner appealed.

The threshold issue in a Rule 12 appeal is whether the requested records are "judicial records," which are defined by Rule 12.2(d) as follows:

"Judicial record means a record 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."

We first address Petitioner's request for copies of Respondent's court dockets. Court dockets are lists of cases that are scheduled to be heard by a court. They are made and maintained by the court and pertain to its adjudicative function. Thus, they are case records, not judicial records as defined by Rule 12.2(d), and they are not covered under Rule 12.¹ Accordingly, we are without authority to address Respondent's denial of access to the requested court dockets.

Petitioner also requested a copy of Respondent's calendar containing entries of his court hearings and their location. In his response to this appeal, Respondent states that he does not maintain a calendar, but that his clerk maintains one that tracks their personal and business appointments so that they can determine when Respondent is available for court hearings and other office duties. The calendar also includes the name of the parties on the dates that a civil case is set for hearing in his court. Respondent asserts that the clerk's calendar is not a judicial record because the clerk does not have an official duty to maintain it and, if the calendar is determined to be a judicial record, Respondent believes that it is exempt from disclosure under Rule 12.5(h).

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 to other law such as the common-law right to public access. *See* Rule 12 Decisions 00-001 and 00-003.

The clerk makes and maintains the calendar at issue for the purpose of assisting the court in scheduling court hearings and other office duties. She uses it as a tool to assist with the administration of the court and she includes information regarding the court's schedule. Scheduling is an activity that is within the regular course of business of a court. We were not provided a sample of the calendar that Respondent's clerk maintains, but from the description provided by Respondent, we find that it is a judicial record.

Respondent also asserts that Rule 12.5(h) (judicial calendar information) exempts the calendar from disclosure. But, Rule 12.5(h) is not a blanket exemption. It only exempts records that "reflect a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy." Though not raised by Respondent, other Rule 12 exemptions, such as home address and family information (Rule 12.5(d)), may also apply to specific calendar entries. But a record is not exempt in its entirety because portions of it are exempt from disclosure. The proper response is to redact exempt entries from the record before providing a copy to the requestor. Rule 12.5(d).

Lastly, Respondent states that the calendar maintained by his clerk is discarded at the end of every month. Rule 12 does not require that a record be maintained for a specified period of time. Rule 12.4(a)(2). Neither does Rule 12 require a records custodian to create a record to respond to a request other than to print information stored in a computer. Rule 12.4(a)(1). If calendars that are responsive to Petitioner's request do not exist in hard or electronic copy, they do not need to be recreated for the purpose of complying with the request.

Accordingly, to the extent that a calendar exists that is responsive to Petitioner's request, the appeal is granted and Respondent should provide Petitioner a copy that has been redacted of any entries containing items that constitute an invasion of personal privacy or that are otherwise exempt from disclosure under another Rule 12 exemption. As stated above, we are without authority to issue a decision regarding the denial of access to the court dockets.