

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-009

RESPONDENT: The Honorable K. Michael Mayes
Judge, 410th Judicial District

DATE: August 23, 2011

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

Petitioner requested the following records from Respondent:

1. "Copy of cellular phone records or billing detail listing incoming and outgoing calls by date and time for the days May 10, 2010 through May 14, 2010 inclusive, for the cellular phone assigned to Honorable Judge K. Michael Mayes."
2. "Copy of any and all calendars and or schedules used by the court or other record, calendar and or schedules used by court personnel in written or electronic form used or maintained by the 410th District Court and or its personnel and or presiding judge for the month of May 2010."
3. "Any and all records of the court or of court personnel of any kind that reveal the whereabouts of Honorable Judge K. Michael Mayes for the days of May 10, 11, 12, 13, 14, 2010."
4. "Copy of any and all email communications between Honorable Judge K. Michael Mayes and any person that discusses vacation plans of any person in the 410th District Court for the month of May 2010."

Respondent informed Petitioner that his request did not comply with Rule 12 because it was emailed to the court's coordinator rather than the judge who is the custodian of the court's records. Respondent also informed Petitioner that if the request were considered appropriate, it was overly broad and vague, failed to reasonably identify the requested records and constituted a clearly unwarranted invasion of confidential matters and personal privacy and invaded the personal and private interests of the entire court's staff, their families and friends. Respondent also claimed that the request included matters that are not judicial records and that the request was for records that are exempt under Rule 12.5(a) (work product and drafts), 12.5(c) (personnel information), 12.5(d) (home address), 12.5(f) (internal deliberations), 12.5(h) (calendar

information), 12.5(i) (confidential under other law), 12.5(i)(1) (information related to a complaint filed against a judicial officer) and 12.5(i)(3) (trade secret or commercial or financial information). Petitioner then filed this appeal.

At the outset, we address whether Petitioner's request fails to comply with the Rule 12 requirement that a "request must be sent to the records custodian and not to a court clerk or other agent for the records custodian." *See* Rule 12.6(a). Petitioner's letter is addressed to Judge Mayes, the judge of the 410th Judicial District Court, but was emailed to the judge's court coordinator. It is evident from the letter's heading that Petitioner intended to direct his request to the judge; it appears that the coordinator's email address was merely used as a vehicle to deliver the letter to the judge's office. In this case, the court's coordinator, who is a member of the court's staff, forwarded the request to the judge of the court. Because Rule 12 is to be liberally construed to achieve its purpose and this request was delivered to the office of the records custodian and the custodian actually received the request, we conclude that the request should be treated as a valid Rule 12 request.

Next, we address the contentions raised by Respondent. The first item of the request is for billing information that lists incoming and outgoing calls by date and time for a specific time period for a cellular phone assigned to Judge K. Michael Mayes. Respondent alleges that the entire request is overly broad and vague, fails to reasonably identify the requested records and is an invasion of privacy and that the bill is an administrative record that is not subject to Rule 12. Petitioner specifically lists the telephone bill he is requesting, the information he requires and the time period for the record. We do not find this request to be vague or ambiguous or that it fails to reasonably identify the requested records. Bills for cellular phone service used by court staff and paid for, in whole or in part, with public funds are records that are maintained for the court in its regular course of business. Because they do not pertain to the court's adjudicative function they are judicial records that are subject to Rule 12. *See* Rule 12.2(d). If Judge Mayes uses a cell phone that is paid for, in whole or in part, with public funds, the bills for that phone are judicial records that are available to the public subject to Rule 12.5 exemptions. Accordingly, we will address the Rule 12.5 exemptions to disclosure of the phone records raised by Respondent.

Telephone bills do not relate to a judicial officer's adjudicative decision-making process, they are not personnel information, they do not constitute internal deliberations of a court, nor do they contain calendar information. Thus, they are not exempt under Rules 12.5(a), (c), (f) and (h). Respondent alleges that these records are also exempt under Rule 12.5(i) (confidential under other law), 12.5(i)(1) (information related to a complaint filed against a judicial officer) and 12.5(i)(3) (trade secret or commercial or financial information). We are not aware of and Respondent has not provided any authority that makes phone bills, telephone numbers, or the names of individuals confidential. Also, we are unable to determine how a list of telephone calls relates to a complaint alleging misconduct against a judicial officer or how it is a trade secret or commercial or financial information. Thus, they are not exempt under Rule 12.5(i), (i)(1) or (i)(3). Some of the phone numbers and names on the phone bill may reflect a person's home or personal telephone number or family members' names. This information is confidential under Rule 12.5(d) and may be withheld. However, 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. *See* Rule 12.6(d).

Petitioner also requested copies of calendars or schedules used by the court or other record, calendar or schedules used by court personnel in written or electronic form for the month of May. Respondent raised the same exemptions and arguments for this item as he did for the phone bills. We have previously held that calendars that are made for the purpose of assisting the court in scheduling court hearings and other office duties are judicial records under Rule 12 and are available to the public subject to Rule 12.5 exemptions. *See* Rule 12 Decision 10-011. The judicial calendar exemption, 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.” Respondent did not provide calendar samples for our review; therefore, we are unable to determine whether any of the entries are exempt under this provision. Also, the request is not for appointments or engagements that are in the future. The other exemptions raised by Respondent do not appear to apply either. A calendar used for the general purpose of maintaining a schedule is not part of a judicial officer’s adjudicative decision-making process, it is not personnel information and it does not constitute the internal deliberations of a court. Thus, Rule 12.5(a), (c) and (f) do not apply. We are not aware of any authority that makes calendars confidential by law; therefore, Rule 12.5(i) does not apply. Respondent did not explain how the requested calendar might be related to a complaint alleging misconduct against a judicial officer, or how it might be considered a trade secret or financial or commercial information. Therefore, Rules 12.5(i)(1) and (i)(3) do not apply either. It is possible that there may be entries in a calendar that may be exempt under Rule 12.5(d) (Home Address and Family Information), but as stated above, this does not make the entire record exempt. The proper response is to redact exempt entries from the record before providing a copy to the requestor. *See* Rule 12.6(d).

The third request is for any records of the court or court personnel of any kind that “reveal the whereabouts” of the Honorable Judge K. Michael Mayes for the days of May 10, 11, 12, 13 and 14, 2010. Respondent raised the same exemptions for this item as for the other requested items and claimed that it is overly broad and vague and fails to reasonably identify the records requested. We interpret the request to be for a record that indicates where Judge Mayes was if he was not in the office. A record with information related to a judge’s personal appointments or schedule when he is not in the office or on the bench is not a record that is made or maintained in the regular course of a court’s business and is not subject to Rule 12. Thus, we are without authority to grant this portion of the appeal or sustain the denial of access to these records.

The last request is for a copy of email communications between Judge Mayes and any person that discusses vacation plans of any person in the 410th District Court for the month of May 2010. Respondent raised the same objections and exemptions to this request as he did for the other items. We construe Petitioner’s request for “vacation plans” to be a request for records that indicate “vacation taken.” A record that documents vacation leave or a request for approval to take leave pertains to a court’s or judicial agency’s administrative function and is a judicial record that is subject to Rule 12. However, like information related to a judge’s personal appointments discussed in the paragraph above, a record that discusses personal vacation plans is not a record that is made or maintained for a court or judicial agency in its regular course of business and is not subject to Rule 12.

Accordingly we grant the petition in part. We are confident that the court will review its records and revise its response so that it is consistent with the analysis we have provided. Records that discuss a judge's personal appointments or where a judge or his staff vacation are not judicial records that are subject to Rule 12; accordingly we are without authority to grant Petitioner's appeal regarding these records or sustain the denial of access to them.