

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 11-012

**RESPONDENT:** Caldwell County Court at Law Judge Edward L. Jarrett

**DATE:** November 1, 2011

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chair; Judge Olen Underwood; Judge David Peebles; Judge Jeff Walker; Judge Kelly G. Moore

Petitioner requested from Judge Edward L. Jarrett (Respondent) information, documents, and communications regarding “Membership Dues, Attorney Occupation Tax, MCLE requirements non-compliance, and ‘Guide to the Basics of Law Practice’ course” from the time Respondent was licensed through July 12, 2011. Respondent replied that the records are not maintained by any governmental entity that he is associated with and suggested that Petitioner contact the appropriate agency or entity directly.

Petitioner appealed Respondent’s action alleging that under Rule 12.6(f) of the Rules of Judicial Administration, Respondent should have forwarded her request to the proper records custodian rather than instructing her to resubmit her request to the proper records custodian. Respondent has informed this committee that he does not have the requested records and that he was not required to respond to the request because none of the records at issue are “judicial records” under Rule 12. Respondent argues that membership dues and MCLE information are maintained by the State Bar of Texas, an entity that is not covered under Rule 12. Regarding the other two records at issue, Respondent replied that attorney occupation tax records may be in the custody of the Supreme Court of Texas and that he has no knowledge of the “Guide to the Basics of Law Practice” course.

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.” (Emphasis added.)

The requested records are not in the Respondent’s custody; therefore, in order to determine whether they are judicial records under Rule 12, we must determine what entity maintains the records and whether that entity is subject to Rule 12. Based on the nature of the requested records, we assume that the “Membership Dues” records requested by Petitioner are records of dues paid by Respondent to the State Bar of Texas (the “Bar”). These records are maintained by the Bar. MCLE records are records related to an attorney’s compliance with minimum continuing legal education

hours and also are maintained by the Bar. Respondent suggested that attorney occupation tax records are maintained by the Supreme Court of Texas, but this committee has confirmed that they too are maintained by the Bar.

The Bar is an administrative agency in the judicial branch. However, Section 81.033 of the Texas Government Code specifically makes the Bar and its records subject to Chapter 552 of the Government Code, and Rule 12 does not apply to records to which access is controlled by Chapter 552 of the Government Code or another statute or provision of law. *See* Rule 12.3(a)(4) and Rule 12 Decision 11-001. Therefore, the membership dues, MCLE and attorney occupation tax records at issue in this appeal are not “judicial records” subject to Rule 12.

Petitioner also requested information regarding the “Guide to the Basics of Law Practice” course. Neither Respondent nor this committee is familiar with this course or records related to it. Because the nature of the records is unknown and we are unable to determine what judicial entity, if any, maintains them, this committee finds that Rule 12 does not apply to these records.

Petitioner argues that Respondent failed to comply with Rule 12.6(f). This provision requires a judicial officer who receives a request for a judicial record not in his or her custody, to promptly attempt to ascertain who the custodian of the record is, and if the proper custodian is identified, to forward the request to the proper custodian. Rule 12.6(f) applies to requests for “judicial records” under Rule 12. Because we have found that the records at issue in this appeal are not subject to Rule 12, Rule 12.6(f) does not apply and Respondent was not required to comply with its provisions.

Accordingly, we deny the petition.