

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-016

RESPONDENT: 328th District Court, Fort Bend County

DATE: February 16, 2012

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

On November 1, 2011, Petitioner submitted a Rule 12 request for eleven items to the 328th District Court (the “court” or “Respondent”). The court sent an e-mail to Petitioner summarizing the eleven items as follows:

Items #1-2	The court’s schedule/calendar of settings from July 1, 2007 to current;
Items #3-4	Records regarding payments to court appointed attorneys from January 1, 2009 to current;
Items #5-6	Records identifying civil appointed attorneys from January 1, 2009 to current;
Items #7-8	List of attorneys eligible for civil case appointments from January 1, 2009 to current;
Items #9-10	Any and all existing records that represent a chronological and logistical accounting of records that are customarily held by the District Clerk of Fort Bend County, Texas, on behalf of the “Presiding Judge”; and
Item #11	Phone records for any employee of the 328 th District Court for county cell phone numbers.

The court asked Petitioner to confirm that the summary was an accurate description of the requested records and asked for clarification regarding item numbers 9 and 10. After failing to receive additional clarification or confirmation that the court’s summary was accurate, Respondent provided to Petitioner the records responsive to item numbers 7 and 8 and advised him that the remaining records did not exist, were maintained by another entity or were not subject to Rule 12. Petitioner then filed this appeal.

We find that Respondent’s summary of the requested records accurately represents Petitioner’s request. Item numbers 1 and 2 are requests for written or electronic records used or maintained by or for the court and its personnel for the purpose of assisting the court in scheduling hearings, trials or other office duties. In its reply to Petitioner’s request, Respondent stated that all settings are entered into the Odyssey database system and can be accessed through a public access portal, and that handwritten notes are not retained once the settings are entered into Odyssey. In his appeal, Petitioner states that he has seen the Respondent’s court coordinator enter information into a binder that appears to contain docket information and that Respondent has failed to provide this

binder to Petitioner. Respondent asserts that it did not know that this is what Petitioner was seeking and, based on this clarification, Respondent has agreed to provide a copy of the binder to Petitioner except for the redaction of entries that contain personal information or a judicial officer's future appointments that are exempt under Rule 12.5(d) and (h). Respondent has provided a copy of the requested binder for our *in camera* review. The items Respondent proposes to redact are docket information regarding sealed cases, Child Protective Services (CPS) cases and adoption cases; notes regarding observations or issues in specific cases, notes regarding personal appointments, events and vacations; appointments related to the court's business; notes indicating when the judge will be out or attending judicial conferences; and notes regarding moving the court's offices to a new location.

Judicial calendars are available to the public subject to Rule 12 exemptions from disclosure. The portions of a judicial calendar that are exempt from disclosure should be redacted prior to release. *See* Rule 12 Decisions No. 10-011 and 11-009. Though Rule 12.5(h) specifically exempts judicial calendar information that reflects a judicial officer's appointments that are in the future or that constitute an invasion of personal privacy, other Rule 12 exemptions also may apply. We have reviewed the entries that Respondent has identified for redaction and find that the docket information (style, cause number, attorney and hearing type information) maintained in the binder related to CPS cases may not be withheld under any Rule 12.5 exemption. However, docket information regarding an adoption case that discloses the name of a child may be withheld to maintain the confidentiality and privacy of the child and docket information regarding sealed cases may be withheld to maintain the confidentiality imposed by the court. This information is exempt from disclosure under Rule 12.5(i). We also find that the entries that appear to be observations or reminders about specific cases constitute judicial work product and are exempt from disclosure under Rule 12.5(a). The disclosure of entries indicating a judge's personal, non-business related appointments and events constitutes an invasion of personal privacy and we find that this information is exempt from disclosure under Rule 12.5(h). However, the release of entries indicating that a judge or his employees are "out" or on "vacation" without additional details does not, in our opinion, constitute an invasion of personal privacy. The public may not have a right to know where a judge goes for vacation, but it does have a right to know when judicial officers and their staff are working and when they are on leave. Thus, this information is not exempt from disclosure unless it is for a future appointment. Lastly, notes regarding appointments related to the judge's or the court's regular course of business, such as notes indicating an office move, appointments that reflect meetings with other judges and absences related to the judge's attendance at a judicial education conference, do not constitute an invasion of personal privacy; therefore, they are not exempt from disclosure unless they are for future appointments.

Item numbers 3 and 4 are requests for records regarding payments made to court-appointed attorneys from January 1, 2009 to present. Respondent informed Petitioner that the county auditor and district clerk maintain these records, but failed to forward Petitioner's request to either. Petitioner argues that Respondent should have forwarded his request to the district clerk as required by Rule 12.6(f) and that he should have been provided the monthly reports that the district clerk sends to the Office of Court Administration (OCA) listing attorneys appointed in civil cases who receive fees of \$500 or more during the month. Based on the clarification that Petitioner is requesting the OCA reports submitted by the district clerk, Respondent has asked the district clerk to provide this information to Petitioner. Although Petitioner is correct that the appropriate response to his request was to have forwarded the request to the district clerk's office, Respondent has since made arrangements to have the records provided to Petitioner, and the issue is now moot.

Item numbers 5 and 6 are requests for records related to the appointment of attorneys in civil cases. Respondent replied that the information responsive to this request consists of orders maintained in case files and are not subject to Rule 12. A judicial record is 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.” Rule 12.2(d). Court orders are case records, not judicial records as defined by Rule 12.2(d). Therefore, Rule 12 does not apply to them¹ and we are without authority to address this issue. *See* Rule 12 Decisions 11-010 and 11-011.

Item numbers 9 and 10 are requests for records that “represent a chronological and logistical accounting of records that are customarily held by the District Clerk of Fort Bend County, Texas, on behalf of the ‘Presiding Judge’ of the ‘Court’ made, used or maintained by or for the ‘Court’ and or its personnel and or ‘Presiding Judges,’ that evidences the chain of custody of such records, from July 1, 2007, to and including the date of” the court’s response to the request. Petitioner failed to respond to Respondent’s request for clarification of this item. In his appeal, Petitioner argues that the plain language used to construct the request clearly defines the nature and scope of the requested records, and he defines the words “chronological,” “logistical/logistics,” “accounting/accountable,” “evidences,” “chain of custody” and “records that are customarily held by the District Clerk.” Respondent maintains that the information provided by Petitioner is insufficient to reasonably identify the records being requested. We agree. Without further clarification, no further action is required of Respondent regarding this portion of Petitioner’s request.

Item number 11 is a request for billing information for cell phones used by or for the court for the purpose of assisting the court in scheduling hearings or trials or other office duties from July 1, 2007 to present. Respondent asserts that neither the judge nor his staff have cell phones that are paid for in whole or in part, with public funds. Cell phone bills are subject to Rule 12 only if they are paid for, in whole or in part, with public funds. *See* Rule 12 Decision 11-009. Accordingly, Respondent does not have any records that are responsive to this item of Petitioner’s request.

Lastly, Petitioner asks that Respondent be sanctioned for failure to comply with Rule 12. Respondent appears to have made a good faith effort to comply with the request and responded appropriately when provided additional information regarding the requested records. It is our opinion that Respondent did not *knowingly* fail to comply with Rule 12; therefore, sanctions under Rule 12.10 would not be appropriate.

In summary, Respondent has agreed to provide some of the requested records at issue, with approved redactions, and the remaining records at issue are not subject to Rule 12 or do not exist. Accordingly, the appeal is denied.

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.