

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 03-002

RESPONDENTS: Elaine M. Timberlake, City of Houston Municipal Court Judge

DATE: July 16, 2003

SPECIAL COMMITTEE: Judge John Ovard, Judge B. B. Schraub, Judge Darrell Hester, Judge Olen Underwood, Judge Jeff Walker

The applicant requested from the City of Houston Municipal Courts Judicial Department copies of any complaints filed against Municipal Court Judge Elaine M. Timberlake. The request was denied on the grounds that any such complaints were exempt from disclosure by Rule 12.5(c), (i), and (k). The judge provided this committee with copies of documents for *in camera* inspection. Many of the documents are on a form titled "Municipal Courts Judicial Complaint Form"; the form also states, "Your complaint will be forwarded to the director and presiding judge of the municipal courts."

Rule 12.5 provides in pertinent part as follows:

"12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:

* * *

"(c) *Personnel Information.* Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.

* * *

"(i) *Information Confidential Under Other Law.* Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law. . . .

* * *

"(k) *Investigations of Character or Conduct.* Any record relating to an

investigation of any person's character or conduct”

We first must determine whether complaints about a municipal judge are personnel records that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. It does not appear that these particular complaints are part of the personnel records of the municipal judge. Further, the complaints are primarily complaints about matters that occurred in open court, and the respondent has not singled out any particular complaints whose disclosure would constitute a clearly unwarranted invasion of personal privacy. This language in Rule 12 is nearly identical to that of Section 552.102 of the Government Code, which excepts from the Public Information Act “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In Open Records Decision No. ORD-350 (1982), the attorney general found that, in general, copies of complaints filed against Houston police officers were available to the public. Certain information contained therein might be excepted if disclosure would contravene constitutional or common law privacy, but such determinations would have to be made on a case-by-case basis. In the absence of any claim by the respondent in our Rule 12 matter that particular complaints contained highly embarrassing material that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, we find that the complaints are not exempt from disclosure under Rule 12.5(c).

We next determine whether any complaints against the municipal judge are confidential under other law, including Chapter 33 of the Government Code. Chapter 33 governs the Judicial Conduct Commission, and Section 33.032 specifies which of the Commission's records are confidential and which are public. Because we have no information that any of the complaints were filed with the Commission, we find that the complaints are not exempt from disclosure under Rule 12.5(i).

We next determine whether any complaints against this municipal judge are records relating to an investigation of any person's character or conduct. We have been provided no information that any complaints resulted in an investigation of the judge's character or conduct. Accordingly, we find that the complaints are not exempt from disclosure under Rule 12.5(k).

We grant the petition for access to complaint records against Judge Timberlake.