

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 23-007

RESPONDENT: Second Court of Appeals, Fort Worth

DATE: September 12, 2023

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Ray Wheless;
Judge Dib Waldrip; Judge Sid Harle; Judge Susan Brown

Petitioner requested all “emails, text messages, [and] instant message media of any kind” sent to or by any justice of the Second Court of Appeals (Respondent) between May 15, 2023 and May 31, 2023 “that can be released under Rule 12.” Respondent denied Petitioner’s request on the grounds that, without a more narrowed scope, compliance with the request would substantially and unreasonably impede the routine operation of the court. Specifically, Respondent wrote, many of the requested communications were exempt from disclosure under Rule 12.5 and requiring Respondent to review all these communications individually to determine their Rule 12 status would hinder Respondent’s ability to carry out court business. After it received Respondent’s denial letter, Petitioner sent Respondent a set of requests for all emails sent to or by any of Respondent’s justices on May 15 and May 16. Respondent again denied the requests, on the same grounds as the initial denial. Petitioner filed a timely appeal of the denial, which was docketed as the instant decision. The same day Petitioner filed its appeal, Petitioner sent Respondent a separate request for all emails sent to or by each of Respondent’s justices on May 17. And approximately one week later, while Petitioner’s initial appeal was pending and prior to receiving a response on the May 17 emails, Petitioner sent Respondent a parallel response for emails sent or received on May 18. Each of these requests was denied, and each was timely appealed. Upon a determination that each of Petitioner’s requests for the May 15 and May 16 emails were substantially similar to the request for the May 17 and May 18 emails, the latter request appeals were consolidated into this decision.¹ Respondent submitted to the Special Committee a reply to the petition, which is considered in full for the consolidated appeal.

Under Rule 12.4(a), judicial records other than those covered by Rule 12.3 (Applicability) and Rule 12.5 (Exemptions from Disclosure) are open to the general public for inspection and copying. Rule 12.8(a) authorizes a records custodian to deny a request for judicial records only if the records custodian (1) reasonably determines that the requested judicial record is exempt from required disclosure under Rule 12 or (2) makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency. Petitioner’s initial request sought a variety of communications sent or received

¹ We note that each of Petitioner’s day-by-day requests appear at spaced intervals, which appears on the surface to be an attempt by Petitioner to address Respondent’s “burdensome” objection to the original request. Material provided to the Special Committee by Respondent in its reply suggests that Petitioner has considered sending a separate request for each day in its original timeframe, which reinforces the consolidation of the petitions.

over a two-week period. We previously addressed a similar situation in Rule 12 Decision No. 18-001, where a judicial records request sought all emails sent to or from a district court's email address over a six-day period. There, the respondent maintained that the request for the emails was overly broad and burdensome. We agreed with the respondent, observing that "when such requests are made, we recommend that records custodians inform requestors so that they may narrow their requests or provide additional information so that the records they are seeking can be identified." *See* Rule 12 Dec. No. 18-001. Giving the petitioner an opportunity to fine-tune the request, we held, was consistent with "the policy of Rule 12 that it be liberally construed to achieve" open courts. *See, e.g.*, Rule 12 Dec. No. 18-001, Rule 12.1.

Consistent with Rule 12.8(a)(2), Respondent in its denial letter offered specific reasons why Petitioner's initial request would substantially and unreasonably impede its operations, and, consistent with Rule 12 Decision No. 18-001, Respondent gave Petitioner an opportunity to narrow its request. Since then, Petitioner has requested emails from Respondent's justices during a now four-day period (May 15 – May 18) and Respondent has retained the reasoning from its initial denial for each subsequent request denial. In its reply to the petition, Respondent writes that Respondent conducts most of its business through electronic communications, and that it would require the sorting of hundreds, if not thousands, of emails to determine what is subject to disclosure under Rule 12 and what is exempt from disclosure.

Rule 12 mandates access to certain *judicial records*² held by a court and its judges, not simply any record within a court's or judge's possession. *See* Rule 12.2(d). Rule 12 contains applicability limitations and exemptions for various policy reasons, and a records custodian must apply the entirety of the rule against records requested when disclosing or withholding records. For this reason, Rule 12 fully contemplates that a request can substantially and unreasonably impede court operations. Indeed, Rule 12 Comment 3 outlines the scenario at play in this appeal.³ Due to the expansive, blanket nature of Petitioner's requests, which now stretch across several weeks covering several days' records, we agree with Respondent that without a more tailored request, attempts to produce responsive, non-exempt judicial records from each of Respondent's justices will substantially and unreasonably impede Respondent's operations.

Where a Rule 12 request is so broad that a records custodian cannot reasonably comply with the request without impeding court operations, the request frustrates Rule 12's aims of an open and transparent judiciary. Like we did in Rule 12 Decision No. 18-001, we here conclude Petitioner's initial request is overly broad and burdensome. Respondent informed Petitioner that it could not reasonably comply with Rule 12 without a narrowed request and offered Petitioner an opportunity to fine-tune the request. But rather than narrow its initial, overly broad request, Petitioner submitted additional, overly broad requests. Accordingly, the petition is denied.

² Rule 12.2(d) defines "judicial record" as 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."

³ Comment 3 to Rule 12 reads as follows: "Rule 12.8 allows a records custodian to deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. As an illustration, and not by way of limitation, a request for 'all judicial records' that is submitted every day or even every few days by the same person or persons acting in concert could substantially and unreasonably impede the operations of a court or judicial agency that lacked the staff to respond to such repeated requests" (emphasis added).