

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-014

RESPONDENT: Fifth Administrative Judicial Region

DATE: November 10, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge David Peoples

Petitioner requested from Respondent certified copies of the list of judges available for assignment in the Fifth Administrative Judicial Region during a certain time period, an order of assignment in a specific case, and the oath of office of a particular assigned judge from 2011 or, in the alternative, one dated prior to January 9, 2014. Respondent provided a list of judges who were eligible for assignment from June 1, 2011 through August 30, 2011 and a copy of the requested order of assignment. Respondent also provided the current oath of office maintained by Respondent for the assigned judge noted on Petitioner's request. Respondent stated in its letter to Petitioner that "there is no other Oath document that is responsive" to the request. Petitioner then filed this appeal.

Petitioner asserts that Respondent did not comply with her request to provide certified copies. Petitioner also asserts that the list of judges who were eligible to serve on assignment that was provided to her does not meet the statutory requirement that a judge's specialty be listed, that it is computer-generated and that there is no evidence that it is a record of the Fifth Administrative Judicial Region. Petitioner also states that the order of assignment is missing certain necessary statutory requirements and that the oath provided to her is not one that was executed prior to January 9, 2014, as requested.

We first note that Rule 12 does not require a records custodian to provide certified copies. Therefore, we are without authority to address the fact that Respondent did not provide certified copies to Petitioner.

We next address the concerns raised regarding the list of judges who were eligible to serve on assignment. Respondent provided the requested list, but it did not include the specialty of each judge on the list. Rule 12 does not require records custodians to create records. *See* Rule 12.4(1). If Respondent does not have this information, Respondent is not required to create it. We are confident that if this information exists, Respondent will provide it to Petitioner in a timely manner.

The next issue raised by Petitioner is that the list of assigned judges provided by Respondent is computer-generated and that there is no evidence that it is a record of the Fifth Administrative Judicial Region. Rule 12 does not require any form of authentication or certification of records. Nor

does Rule 12 require that the records be provided in a specific format. The fact that the list was “computer-generated” does not violate a Rule 12 requirement. Based on the letter and the copy of the assigned judges list that was sent by Respondent to Petitioner, we conclude that Respondent has complied with Rule 12 regarding the requested list of assigned judges.

Petitioner also asserts that the order provided by Respondent is missing information required by statute. An “order” is a case record that is not subject to Rule 12¹; therefore, we are without authority to rule on this matter. However, if it were subject to Rule 12, Respondent would have already complied. Records custodians are without authority to alter documents. The order provided to Petitioner was one that was issued and entered in a case. Its content cannot be altered based on a request for information.

Lastly, Petitioner requested the oath of office of a specific assigned judge taken during a particular time period. Respondent provided the oath that is currently on file for the judge and informed Petitioner that there is no other oath responsive to Petitioner’s request. It is evident from the response provided by Respondent that the record Petitioner is seeking does not exist. Rule 12 cannot compel a judicial officer to produce a record that does not exist. Therefore, no further action is required by Respondent under Rule 12 regarding the requested oath. *See Opinion Regarding Petitions for Access to Records Regarding Assigned Judges, Oct. 21, 2004.*

In summary, to the extent that a list of judges who are eligible for assignment indicating the specialty of the judges exists, Respondent should provide this information to Petitioner. Respondent has complied with the other requests made by Petitioner. Accordingly, Petitioner’s remaining issues are denied.

¹ A “judicial record” subject to Rule 12 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. *A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.*” Rule 12.2(d).