

Before the Presiding Judges of the Administrative Judicial Regions
Per Curiam Rule 12 Decision

APPEAL NO.: 23-001

RESPONDENT: 10th Judicial District Court, Galveston County

DATE: May 17, 2023

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Missy Medary;
Judge David Evans; Judge Ana Estevez; Judge Alfonso Charles

On February 23, 2023, the District Judges of Galveston County held one of their monthly meetings where they discuss various topics relating to the courts. During this meeting, the district court administrator used a small digital recording device to assist in preparing the minutes of the meeting. Later that day, Petitioner sent the district court administrator an email requesting a copy of the meeting recording; the district court administrator in turn forwarded the email to Respondent. Respondent subsequently requested the recording device from the district court administrator and deleted the requested recording from the device. On February 27, Respondent informed Petitioner that Respondent had received Petitioner’s request for the meeting recording and had deleted it. Respondent further explained the sensitive nature of the district judges’ meetings and offered to discuss aspects of the meeting with Petitioner but did not otherwise directly address Petitioner’s request.

On March 9, Petitioner submitted a letter to the Office of Court Administration (OCA) complaining that Respondent was, under Rule 12, required to make the recording available to Petitioner in a timely fashion or to deny Petitioner’s request for the record. Respondent requested OCA “take appropriate action to hold [Respondent] accountable for his intentional disregard of his obligations under Rule 12 by intentionally destroying a requested judicial record.” OCA forwarded Petitioner’s letter to the regional presiding judges, who in turn formed a special committee under Rule 12.9(f) to review Respondent’s denial of access to the requested judicial record. In reply to the petition, Respondent conceded that it was unfamiliar with Rule 12 and admitted that it had destroyed the sought-after record. Respondent contested Petitioner’s assertion that Respondent had intentionally disregarded Rule 12, arguing that Respondent did not knowingly deprive Petitioner of formal notice of denial and a right to appeal because Respondent “knew nothing of Rule 12” when the record was destroyed. Respondent further states that the recording in question was not made or maintained by a court or judicial agency in its regular course of business and argues that, even if the recording was a judicial record subject to Rule 12, the recording would have been exempt from disclosure under Rule 12.5(f) because the recording contained deliberations on matters of court or judicial administration.

We first consider Respondent’s request that OCA “take appropriate action to hold [Respondent] accountable” for the actions giving rise to Petitioner’s petition. OCA’s only role regarding Rule 12 is to notify the Respondent and the presiding judges of the Administrative

Judicial Regions of the receipt of a petition for review. The presiding judges then refer the matter to a special committee, as has been done in this appeal, for its review and determination regarding the petition for review. *See* Rule 12.9(d), 12.9(f), and Rule 12.9(h).

The threshold issue in a Rule 12 appeal is whether the record at issue is a “judicial record” subject to Rule 12. Rule 12.2(d) defines a “judicial record” as a record 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.” In the reply to the petition, Respondent noted that the recording was not made or maintained in the regular course of business. No previous Rule 12 decision has addressed whether a recording of a meeting for the purpose of preparing meeting minutes is a record that is made in the regular course of business of the entity conducting the meeting. However, in examining legal materials to illuminate the meaning of “regular course of business,” we happened upon the definition of “course of business” in *Black’s Law Dictionary*. *Black’s* defines “course of business” as “the normal routine in managing a trade or business,” and notes that the legal idiom “course of business” is also termed “regular course of business.” Informed by *Black’s*, then, the issue in this appeal might be viewed this way: *is the use of the recorder in creating the minutes a “normal routine” related to the holding of the District Judges’ meeting?* In its reply, Respondent explained that the district court administrator “has a small digital recording device which she uses to assist her in preparing minutes of the meeting” and that “the recordings have never been accessed in any fashion other than by the [district court administrator] in preparing minutes.” This confirms that the district court administrator regularly records the meetings and uses these recordings to prepare the meeting minutes. We conclude, then, that the district court administrator’s regular use of a recorder to record the District Judges’ meetings for the purpose of creating the minutes is a “normal routine” related to the holding of the District Judges’ meetings. Thus, the recording is a judicial record as defined by Rule 12.2(d).

The purpose of Rule 12 is to “provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary.” *See* Rule 12.1. Rule 12.4(a) provides that judicial records, other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. Rule 12 requires a records custodian to, within 14 days of actual receipt of a request to inspect or copy a judicial record, either allow the requestor to inspect the record, send notice that the record cannot within a reasonable time be produced, or deny the requestor access to the record. *See* Rule 12.6(b), Rule 12.8. Where a record is withheld, Rule 12.8(c) requires a notice of denial to be in writing, to state the reason for the denial, and inform the requestor of the ability to appeal the denial under Rule 12.9 along with contact information for OCA’s Administrative Director. Respondent complied with none of these requirements.

Respondent asserts that the recording would have been exempt from disclosure under Rule 12.5(f) (*Internal Deliberations on Court or Judicial Administration*). This may have been the case, but without the benefit of reviewing the recording, we are unable to make any conclusions regarding the record at issue in this appeal.

The Supreme Court of Texas adopted Rule 12 of the Rules of Judicial Administration in 1999. From adoption of Rule 12 until now, we had never received an appeal in which the

requested record had been deliberately destroyed following receipt of a request for access to the record. Rule 12 provides a method for judicial officers to withhold requested records and gives requestors the right to seek review of a judicial officer's decision to deny access to requested records by a special panel of presiding judges of the administrative judicial regions. Even if a record is exempt from disclosure, the appropriate action is to withhold the record, not destroy it. Destruction of a judicial record following receipt of a request for access to it is a violation of Rule 12 and ignorance of Rule 12 does not excuse it.¹

Lastly, our authority is limited to that given to us by Rule 12 to "review the petition and the records custodian's response and determine whether the requested judicial record should be made available under Rule 12." *See* Rule 12.9(g). However, because the judicial record in question is not available for our review, we are unable to take any further action in this appeal.

¹ Additionally, most records maintained by judicial officers are also subject to retention requirements that must also be complied with. *See* Comment 2 to Rule 12 of the Rules of Judicial Administration.