

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 06-001

**RESPONDENT:** Sherri Adelstein, Denton County District Clerk

**DATE:** April 7, 2006

**SPECIAL COMMITTEE:** Judge B. B. Schraub, Chairman; Judge John Ovard; Judge David Peeples; Judge Olen Underwood; Judge Stephen B. Ables

Applicant requested information on payments made from the 393<sup>rd</sup> Judicial District Court to attorneys appointed as attorneys or guardians *ad litem* for the years 2002 to the present, and the request was denied. The Respondent agrees with Applicant that the records are judicial records within the definition of Rule 12.2(d), but claims that the records are exempt from disclosure under Rule 12.5. In response to the request of the Special Committee, Respondent submitted for *in camera* inspection copies of three types of documents that would be responsive to the request but which are claimed to be exempt from disclosure.

In Order No. 94-9143, the Supreme Court of Texas requires district clerks to send monthly reports to the Office of Court Administration (OCA) listing each fee paid during that month in the amount of \$500 or more for each appointment made in a civil case, probate case, or proceeding governed by Titles 1, 2, or 4 of the Texas Family Code. The report must include the name of the person appointed, the name of the judge approving the fee, the case number and style of the case, the date of the order, the position to which the person was appointed, and the amount and source of the fee. Section 6 of the order provides as follows:

“The clerk shall make a copy of this report available for public inspection in the clerk’s office, and shall, before the twentieth day of the month following the month reported, transmit a copy of the report to the Supreme Court through the State Office of Court Administration in Austin.”

Both the Supreme Court order and Section 71.035 of the Texas Government Code require district clerks to maintain copies of the monthly reports for at least two years and to make them available to the public for inspection and reproduction.

One set of documents that Respondent alleges to be exempt from disclosure is the monthly reports from the clerk to OCA. Another set of documents is a copy of the court’s trust account check register consisting of transactional reports listing deposits made in the court’s trust account maintained by the district clerk. This report lists the name of the court appointed attorney, the invoice number, the amount of the check, and the check number. The third set of documents is a

spreadsheet that contains a compilation of the data in the required monthly reports, with additional information about the nature of the suit and the payments. All of the records are public in nature and would be subject to disclosure unless exempted by Rule 12.

Litigation is pending in the 393<sup>rd</sup> District Court of Denton County alleging that the district judge of that court improperly ordered payment of *ad litem* fees to various attorneys. The Respondent alleges that this pending litigation makes the requested documents exempt from disclosure under Rule 12.5(j), which provides as follows:

- “(j) Litigation or Settlement Negotiations. Any judicial record relating to civil or criminal litigation or settlement negotiations:
- (1) in which a court or judicial agency is or may be a party; or
  - (2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person’s office or employment.”

The monthly reports to OCA and the trust account register reports are inherently public documents and are required to be created and maintained in the regular course of the clerk’s business. The fact that these reports also may be relevant evidence in a lawsuit that relates to a court or judge or judicial officer cannot strip them of their public nature. Accordingly, those records are subject to disclosure, and we grant the petition for access to these clerk’s reports.

According to Respondent, the clerk created the spreadsheet at the request of the judge in anticipation of litigation in which she is or may be named a party. We express no opinion regarding whether the spreadsheet is subject to disclosure pursuant to the Rules of Civil Procedure. We find it is exempt from disclosure under Rule 12.5(j), and we deny the petition for access to the spreadsheet.