

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-004

RESPONDENT: Sabine County District Clerk

DATE: April 26, 2010

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard, Judge David Peeples, Judge Manuel Bañales, Judge Billy Ray Stubblefield

Petitioner requested from the Sabine County District Clerk “the most recent itemized bank statements with corresponding attachments, including but not limited to checks, deposits, transfers and/or withdrawals, pertaining to any and all accounts maintained by or for the Office of the Sabine County District Clerk.” Respondent provided Petitioner a copy of the statements related to the district clerk’s general operating account and informed Petitioner that she was requesting a ruling from the Office of the Attorney General (OAG) regarding whether certain Public Information Act (PIA) exemptions applied to the district clerk’s escrow and minor accounts. Petitioner interpreted Respondent’s action as a denial of access to the escrow and minor account information and filed this appeal under Rule 12.9 of the Rules of Judicial Administration. Respondent’s position is that this appeal is premature because her waiting for a ruling from the OAG to instruct her on how to proceed regarding the minor and escrow accounts is not a denial of Petitioner’s request.

We will not reach the issue of whether Respondent has in fact denied Petitioner’s request for records because we find that neither the PIA nor Rule 12 applies to the records at issue.

First, we address whether the PIA applies to the records of a district clerk. If it does, Rule 12 cannot apply. *See* Rule 12.3(a)(4). The governmental bodies subject to the PIA do not include the judiciary. *Tex. Gov’t Code Section 552.003(1)(B)*. Further, the PIA provides that “access to information collected, assembled or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Tex. Gov’t Code Sec. 552.0035(a)*. District clerks collect, assemble and maintain information for the judiciary. Therefore, their records are not subject to the PIA.¹

Next, we must consider whether Rule 12 applies. Rule 12 was adopted by the Supreme Court of Texas to address public access to judicial records. It governs requests to inspect or copy judicial records in the custody of a records custodian of a court, judicial officer, or judicial agency. “Judicial agency” is defined by Rule 12.2(b) as an “office, board, commission or other similar entity that is in the Judicial Department and that serves an administrative function for a court.” Article V, Section 9 of the Texas Constitution created the 254 district clerk offices in the Judicial Department and they

¹The OAG, in open records letter rulings dealing with records similar to those at issue in this appeal, has held that they are not subject to the PIA. *See* Open Records Letter Nos. 99-2109 (1999), 96-0976 (1996) and 93-764 (1993).

serve an administrative function for the district courts of the county. Thus, a district clerk's office is a judicial agency covered by Rule 12.

But not all records maintained by a judicial agency are subject to Rule 12. Rule 12 only applies to "judicial records" defined by Rule 12.2(d) 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. 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.*" (Emphasis added.)

The records at issue are bank statements for Respondent's "escrow account" and "minor account." In Respondent's letter to the OAG, Respondent states that the accounts reflect moneys that are placed in the registry of the court and that one is for minor settlements and the other is for all other deposits into the court's registry. All of the deposits made to these accounts are done pursuant to court order or are deposited in connection with a court case. Thus, these records are not judicial records as defined by Rule 12.2(d). They are case records and Rule 12 does not apply to them.

Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.²

² We note, however, that case records or court records that are not subject to Rule 12 may be open pursuant to other law such as the common-law right to public access. As guidance we refer Respondent to Rule 12 Decision 00-001 and Open Records Letter Nos. 99-2109 (1999) and 93-764 (1993).