

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 15-016

RESPONDENT: Judge Chris Oldner, 416th Judicial District Court
Judge Scott Becker, 219th Judicial District Court
Judge John R. Roach, Jr., 296th District Court

DATE: January 5, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield;
Judge David Peeples; Judge Dean Rucker; Judge David L. Evans

Petitioner requested from Respondents “information existing in the records of the 219th Judicial District Court.” Petitioner asked for records created during specific time periods ranging from January 1, 2015 through October 6, 2015. The following is a summary of the four categories of records Petitioner requested:

- 1) documents and communications by, between, to, from (including copies and blind copies) Respondents and the individuals appointed to serve as attorneys pro tem in the criminal actions filed against Attorney General Ken Paxton;
- 2) documents and communications by, between, to, from (including copies and blind copies) Respondents and any other recipient regarding Attorney General Paxton and the cases involving him;
- 3) documents and communications by, between, to, from (including copies and blind copies) Respondents and others relating to the position of Attorney Pro Tem, the persons appointed to serve as attorneys pro tem in the General Paxton case, General Paxton and another individual; and
- 4) documents and communications by, between, to, from (including copies and blind copies) the Collin County District Clerk or her staff, members of the Commissioners’ Court and others relating to the position of Attorney Pro Tem, the persons appointed to serve as attorney pro tem in the General Paxton matter, and General Paxton.

The Respondents denied his request claiming the requested records are exempt from disclosure under Rules 12.5(a) and 12.5(f). One of the Respondents also noted that he was not the custodian of the requested records as defined by Rule 12.2(e)(1) and referred the request to Judge Becker. Petitioner then filed this appeal.

Only Judge Scott Becker, the presiding judge of the 219th Judicial District Court, responded to Petitioner’s appeal. The judicial records of a court with only one judge are in the custody of that

judge. *See* Rule 12.2(e)(1). Because the request for records was limited to “records of the 219th Judicial District Court,” the other two Respondent’s did not need to respond to this appeal as they are not the custodians of the records of the 219th Judicial District Court.

In his response to this appeal, Judge Becker maintains that the responsive records are exempt from disclosure under Rule 12.5(a), *Judicial Work Product and Drafts*, and Rule 12.5(f), *Internal Deliberations on Court of Judicial Administration Matters*. He submitted the responsive records for our *in camera* review.

As we discussed in Rule 12 Decision No. 15-010, matters related to a court’s adjudicative function are not subject to Rule 12. Additionally, Rule 12.2(d) also provides that 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.” Most of the records submitted by Judge Becker pertain to matters that are related to the criminal matters involving General Paxton and were created, produced, or filed in connection with those cases. These records are not judicial records under Rule 12 and we are without authority to grant the petition in whole or in part or to sustain the denial of access to them.

Some of the records submitted by Judge Becker discuss matters related to the General Paxton case but they were not created, produced or filed in connection with the case. Additionally, these records are not judicial work products and drafts and do not pertain to internal deliberations on court or judicial administration matters. We grant the petition regarding these records and they should be released.

We identified some records that contain information that is exempt from disclosure and some that is not. The portions that are not subject to disclosure consist of internal deliberations on court or judicial administration matters and are exempt under Rule 12.5(f). The appropriate response when a record contains some information that is subject to disclosure and some that is not is to redact the information that is not subject to disclosure. *See* Rule 12.6(d). We have marked the portions of the records submitted by Judge Becker that should be redacted. The remainder of the documents should be released.

Lastly, some of the records submitted by Judge Becker are records that pertain to internal deliberations regarding judicial administration matters and do not contain any information that is not subject to disclosure. These records may be withheld.

Judge Becker has authorized us to forward to Petitioner any records he submitted for our review that we determine are not exempt from disclosure. Accordingly, we will forward these documents to Petitioner.