

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 05-005

RESPONDENTS: Brazos County juvenile board judges Randy Michel, J. D. Langley, Steve Smith, and Jim Locke

DATE: February 13, 2006

SPECIAL COMMITTEE: Judge B. B. Schraub, Chairman; Judge John Ovard; Judge Dean Rucker; Judge Jeff Walker; Judge Kelly G. Moore

Applicant requested that the Brazos County trial court judges serving on the juvenile board provide all e-mails between themselves and an attorney who represented indigent juvenile detainees as a contract services attorney for the county. The request provided as follows:

“While all e-mails are preferred, in the interest of expediting the process [we] would be willing to forgo messages in which the subject matter is limited only to specific cases in a judge’s courtroom. In other words, the [requestor] is primarily seeking subject matters that are non-work related.”

The request was denied on the grounds that if the requestor primarily sought records that were non-work related, then those records necessarily were not made or maintained in the regular course of business, and the records would not fall within the Rule 12.2(d) definition of judicial records. The judges also claimed several exemptions from disclosure if the requested records were found to be judicial records under Rule 12. The applicant retained counsel and appealed from the denial of access.

The applicant’s counsel stresses to this committee that the applicant’s limiting language was merely intended to exclude records related to the judges’ adjudicatory functions; it was not meant to exclude records made outside the regular course of business. Counsel notes that documents may be completely unrelated to a judge’s adjudicative function and still be kept in the regular course of business. Indeed, those are the only court documents that are covered by Rule 12.

This committee is mindful of the policy expressed in Rule 12.1 that the rule should be liberally construed to achieve its purpose of providing public access to information in the judiciary consistent with the constitutional mandates of open courts and an independent judiciary. Furthermore, Rule 12.6(h) provides as follows:

“A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made”

We will not apply such a hyper-technical importance to the words used to request access to records

that only attorneys will have the acumen to make adequate requests. Citizens should be given access to judicial records regardless of whether they are able to invoke the correct “magic words” to gain that access. We do not require citizens to cite to “Rule 12” instead of to the “Public Information Act” or the “Open Records Act.” Similarly, we will not require citizens to recite that they are seeking records “not pertaining to a judge’s adjudicative function” instead of saying that they are seeking records “that are non-work related.” If we were to reach a result based only on the language used by the parties, we would say the counsel for the Brazos County judges is precluded from claiming the records are not judicial records because in a December 2, 2005 letter to the Office of the Attorney General, the county attorney contends that “the records requested are judicial records.”

Looking at the substance of the request, we find that the applicant was seeking e-mails between the judges and the contract attorney sent in the regular course of business but not pertaining to the judges’ adjudicative functions; thus the records sought are judicial records within the meaning of Rule 12. As such, they must be disclosed, unless Rule 12.3 makes the rule inapplicable or unless the records are subject in whole or in part to the exemptions from disclosure found in Rule 12.5. In their response to the petition, the judges waived all bases for denial of the request other than their claim that the records are not judicial records. Accordingly, we need not reach the exemptions issues raised in their original denial of the request.

We grant the petition for access to e-mails between the judges and the attorney which were sent in the regular course of business but did not pertain to the judges’ adjudicative functions.