

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-017

RESPONDENT: Caldwell County Court at Law Judge Edward L. Jarrett

DATE: February 29, 2012

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge John Ovard; Judge Olen Underwood; Judge J. Rolando Olvera; Judge Jeff Walker

Petitioner requested the following records from Judge Edward L. Jarrett (“Respondent”):

1. “Copy of cellular phone records or billing detail listing incoming and outgoing calls by date and time for the days March 1, 2010 through October 1, 2010 inclusive, for the cellular phone assigned to Caldwell County Judge Edward Jarrett.”
2. “Copy of any and all calendars and or schedules used by the court or other record, calendar and or schedules used by court personnel in written or electronic form used or maintained by the Caldwell County Court at Law and or its personnel and or presiding judge for the month of March 1, 2010 – October 1, 2010.”
3. “Any and all records of the court or of court personnel of any kind that reveal the whereabouts of Caldwell County Court at Law Judge Edward Jarrett for the days of his recusal for case number 31648.”
4. “Copy of any and all email communications between Caldwell County Court at Law Judge Edward Jarrett and any person that discusses vacation plans of any person in the Caldwell County Court at Law for the months March 2010 through October 2010.”

Respondent replied that he does not have any information responsive to numbers 1 and 2 and that the records responsive to numbers 3 and 4 are exempt from disclosure under Rule 12.5(c) and (h). Petitioner then filed this appeal.

The first item requested by Petitioner is a copy of cellular phone bills or records for the cell phone assigned to Judge Jarrett. Respondent states that he does not have a cellular phone issued to him by the county or paid for, in whole or in part, with public funds. Petitioner argues that Respondent should provide bills for the cellular phone numbers that he has provided to his staff and to the public so that she can confirm that public funds have not been used to pay for this cellular phone service. We previously have held that bills for cellular phones used by court staff and paid for, in whole or in part, with public funds, are judicial records that are subject to Rule 12. *See* Rule 12 Decision No. 11-009. Respondent has informed this committee that he has not been assigned a

cellular phone by the county and that public funds are not used to pay for any portion of the costs associated with his personal cellular phone. Rule 12 does not require Respondent to disclose personal cellular phone bills in order to prove that they are not paid for with public funds. This portion of Petitioner's appeal is denied.

Petitioner also requested copies of calendars or schedules used by the court or other record, calendar or schedules used by court personnel in written or electronic form from March 1, 2010 through October 1, 2010. Respondent informed Petitioner that he does not have records responsive to this request and stated that if the information exists, it would be in the possession of the Caldwell County Clerk. Petitioner maintains that Respondent failed to comply with Rule 12.6(f). This provision requires a judicial officer who receives a request for a judicial record not in his custody to promptly attempt to ascertain who the custodian of the records is, and if the proper custodian is identified, to forward the request to the proper custodian. In response to the appeal, Respondent explains that the requested records do not exist and that his suggestion that Petitioner check with the Caldwell County Clerk was a courtesy. Respondent also argues that any calendar that the clerk has is a calendar maintained by the clerk and not a calendar that is used or maintained by his court as requested by Petitioner. Because the request was for a calendar that is used or maintained by the court or its staff and Respondent has indicated that such a record does not exist, Respondent was not required to take further action. Accordingly, this portion of Petitioner's appeal is denied.

The third request is for records of the court or court personnel of any kind that "reveal the whereabouts" of Judge Jarrett on the days in which a case in which he was recused was heard. In Rule 12 Decision No. 11-009, we interpreted a similar request to be one for records that indicate where the judge was if he was not in the office. We ruled that a record with information related to a judge's personal appointments or schedule when he is not in the office or on the bench is not a record that is made or maintained in the regular course of a court's business and is not subject to Rule 12. Though we agree with this ruling, we want to clarify that information regarding a judicial officer's "whereabouts" that reveals engagements or appointments related to the judicial officer's regular course of business, such as attendance at a judicial education conference or a judicial meeting, is subject to Rule 12. Because the requested information may be subject to Rule 12, we will address Respondent's claims that it is exempt from disclosure under Rule 12.5(c) and (h). Rule 12.5(c) does not exempt this information because it only applies to personnel records and information regarding a judicial officer's "whereabouts" is not a personnel record. Rule 12.5(h) exempts information that reflects appointments or engagements that are in the future or that constitute an invasion of personal privacy. Respondent did not explain why the release of the responsive information would constitute an invasion of personal privacy. If the information reveals personal, non-business related appointments or events, we agree that release of this information would constitute an invasion of personal privacy. However, general statements about leave or documentation about appointments or events that are in the Respondent's regular course of business do not constitute an invasion of personal privacy and are not exempt under Rule 12.5(h) unless they reflect appointments or engagements that are in the future. *See* Rule 12 Decision No. 11-016.

The last request is for a copy of email communications between Judge Jarrett and any person that discuss vacation plans of any person in Judge Jarrett's court for the months of March 2010 through October 2010. In Rule 12 Decision No. 11-009, we interpreted a similar request for "vacation plans" to be a request for records that indicate "vacation taken." In that decision we held that a record that discusses personal vacation plans is not a record that is made or maintained for a

court or judicial agency in its regular course of business and is not subject to Rule 12. But we also explained that a record that documents vacation leave or a request for approval to take leave pertains to a court's or judicial agency's administrative function and is a judicial record that is subject to Rule 12. We reaffirm this analysis and find that records responsive to the request at issue in this appeal may be subject to Rule 12 depending on the content. Respondent maintains that this information is exempt from disclosure under Rule 12.5(c) and (h). Rule 12.5(c) exempts from disclosure any personnel record that would constitute a clearly unwarranted invasion of personal privacy. Though leave records may be considered personnel records, the release of basic leave information or a notation that a person is "out," without additional details, would not constitute an invasion of personal privacy, much less a clearly unwarranted invasion of personal privacy as required by Rule 12.5(c). *See* Rule 12 Decision No. 11-016. Therefore, this information is not exempt under Rule 12.5(c) and it is not exempt under Rule 12.5(h), unless it is for an appointment or engagement that occurs in the future.

Accordingly, we sustain the denial of access to Respondent's cellular phone bill records and find that, because the requested judicial calendar records do not exist, Respondent was not required to comply with Rule 12.6(f). Additionally, we find that information regarding the Respondent's "whereabouts" and emails that discuss the Respondent's or his staff's vacation plans may be judicial records. We are confident that Respondent will review the responsive records, if any, and respond in a manner that is consistent with this decision.