

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 10-008

**RESPONDENT:** Judge C. Victor Lander, Administrative Judge, City of Dallas Municipal Court

**DATE:** June 4, 2010

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Olen Underwood, Judge David Peeples, Judge Billie Ray Stubblefield, Judge Kelly G. Moore

Petitioner requested “copies of the most recent evaluations of all city of Dallas municipal judges.” Respondent denied Petitioner’s request claiming that the responsive records were exempt from disclosure under Rules 12.5(c), 12.5(i)(1) and 12.5(k) of the Rules of Judicial Administration. In his response to this appeal, Respondent clarified that his basis for denying the request is that all of the responsive records are exempt from disclosure under Rule 12.5(c) and that portions are also exempt under Rules 12.5(d), 12.5(i) and 12.5(k). Respondent has provided copies of the records for *in camera* inspection.

We first address whether the records may be withheld under Rule 12.5(c). This rule exempts from disclosure “any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.” In Rule 12 Decision 03-002, the special committee considered whether Rule 12.5(c) exempted from disclosure complaints against a municipal judge. The committee recognized that Rule 12.5(c) is nearly identical to Section 555.102 of the Government Code which excepts from the Public Information Act “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Because of the similarity of the two provisions, the committee relied on an Office of the Attorney General (OAG) Open Records Decision that interpreted Sec. 3(a)(2) of the Open Records Act, the predecessor to Section 555.102 of the Government Code.

We agree that Rule 12.5(c) and Section 552.102 of the Government Code are nearly identical and have reviewed OAG Open Records Decisions that have addressed the applicability of Section 555.102 (or its predecessor) to employee performance evaluations. In Open Records Decision No. 473, the attorney general followed the common-law privacy test provided in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Under this test, “information may be withheld on common-law privacy grounds only if (1) the information contains highly intimate and embarrassing facts about a person’s personal affairs such that release of the information would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public.” Tex. Att’y Gen. ORD No. 473, pg. 3. The performance evaluations provided for our *in camera* review contain general information regarding job performance. Though some of the information may be critical of a certain aspect of a judge’s

performance, none of it is highly intimate or embarrassing information about a person's personal affairs, which if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Therefore, Rule 12.5(c) does not exempt these records from disclosure.

Next we address Respondent's position that some of the requested information can be withheld under Rule 12.5(d) which exempts information that reflects a person's home address, home or personal telephone number, social security number or family members. Respondent has highlighted portions of the evaluations that mention judges' family members. We agree that these highlighted portions reflect family members and are exempt under Rule 12.5(d) and should be redacted prior to release.

Lastly, Respondent maintains that some of the information in the responsive documents is "exempt from disclosure under Rule 12.5(i) because the information constitutes 'a complaint alleging misconduct against a judicial officer' and under Rule 12.5(k) because the information constitutes 'any record relating to an investigation of any person's character or conduct.'"

Respondent appears to be relying on Rule 12.5(i)(1) which provides, in pertinent part,:

**"12.5 Exemptions from Disclosure.** The following records are exempt from disclosure under this rule:

"(i) *Information Confidential Under Other Law.* Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:

(1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;"

Chapter 33 of the Government Code pertains to complaints filed with the Judicial Conduct Commission. Therefore, in order for a record to be exempt from disclosure under Rule 12.5(i)(1), the complaint must be one that was filed with the Judicial Conduct Commission (Commission) or is confidential under some other law. One of the highlighted sentences indicates that complaints have been filed with the Commission. We agree that this sentence relates to a complaint alleging misconduct against a judicial officer that was filed with the Commission and is exempt from disclosure under Rule 12.5(i).

We next determine whether the highlighted information is exempt from disclosure under Rule 12.5(k) because it relates to an investigation of a person's character or conduct. Respondent has not provided us with any information that indicates that the highlighted portions are part of an investigation or have resulted in an investigation of the judge's character or conduct. Therefore, we find that the highlighted portions are not exempt from disclosure under Rule 12.5(k). *See* Rule 12 Decision 03-002.

Accordingly, this appeal is affirmed in part and denied in part. Except for the information that mentions the judges' family members and refers to complaints filed with the Commission, Respondent should release the requested judicial records.