

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 11-014

**RESPONDENT:** 145<sup>th</sup> District Court, Nacogdoches County

**DATE:** January 18, 2012

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chair; Judge Olen Underwood; Judge David Peebles; Judge Jeff Walker; Judge Billy Ray Stubblefield

On November 1, 2011, Petitioner requested from the 145<sup>th</sup> District Court (the “court” or “Respondent”) “copies of written and/or electronic communications” between the judge of the court and elected officials and county department heads and employees, some identified by name, that discussed Petitioner or the actions and operations of Petitioner’s office. Respondent denied most of Petitioner’s request claiming that the responsive records are exempt from disclosure under Rule 12.5(j) (Litigation or Settlement Negotiations). Petitioner then filed this appeal and later filed a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC) regarding actions allegedly taken by Respondent.

In addition to claiming the litigation exemption, Respondent argues that Petitioner is estopped from exercising his right of appeal because Petitioner did not appeal the denial of a similar request that he had submitted to Respondent in May of 2011. Respondent asserts that Petitioner should have filed his appeal within 30 days of the denial of the May 2011 request and, having failed to do so, he should not be allowed to appeal the denial of a subsequent request for similar records.

First we will address whether the filing of this appeal complies with the requirements of Rule 12.9. Rule 12.9(c) provides that a petition for review of a denial of access to records must be filed no later than 30 days after the date that the petitioner receives notice of a denial of access to judicial records. In May of 2011, Petitioner requested various records from Respondent, including “a copy of any and all correspondence (received or sent) via written document or via electronic communication” concerning Petitioner’s personal or professional actions “from any person, including elected, appointed officials of Nacogdoches County and any county employees.” The request at issue in this appeal is also for communications between Respondent and elected and appointed officials and employees of Nacogdoches County that discuss Petitioner, but it is more concise, specifically identifies individuals, and narrows the time period of the request. Nevertheless, we find that none of the documents requested by Petitioner in his latest request are outside the scope of the original request he made in May of 2011. Therefore, we find that Petitioner’s request was originally submitted in May of 2011 and he had 30 days from the denial of that request to submit his appeal.

Additionally, even if we were to find that Petitioner’s appeal is timely, the responsive records would be exempt from disclosure under Rule 12.5(j) (Litigation or Settlement). Rule 12.5(j)

exempts from disclosure “any judicial record relating to civil or criminal litigation or settlement negotiations: (1) in which a court or judicial agency is or may be a party; or (2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person’s office or employment.” Petitioner has filed a complaint of discrimination with the EEOC regarding actions allegedly taken by Respondent. Though we are not bound by Open Records Decisions issued by the Attorney General of Texas (AG), we find them informative when they pertain to provisions, such as the litigation exception, that are similar to those found in Rule 12. In Open Records Decision No. 266 (1981), the AG held that the litigation exception applies when a complaint has been filed with the EEOC. *See also* ORD No. 326 (1982). We agree with the AG’s analysis and find that it is reasonable to conclude that a judicial officer may be a party to litigation as a consequence of the person’s office when a complaint regarding the officer’s action is pending with the EEOC. Thus, any record related to the subject of the EEOC complaint filed by Petitioner, such as those submitted for our *in camera* inspection, are exempt from disclosure under Rule 12.5(j).

Accordingly, the appeal is denied.