

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 05-004

**RESPONDENTS:** Travis County District Judges Wilford Flowers, Mike Lynch, Jon Wisser, Bob Perkins, Julie Kocurek, and Brenda Kennedy

**DATE:** February 10, 2006

**SPECIAL COMMITTEE:** Judge John Ovard, Chairman; Judge David Peeples; Judge Olen Underwood; Judge Dean Rucker, Judge Stephen Ables

Article 2.25 of the Texas Code of Criminal Procedure provides as follows:

“A judge shall report to the United States Immigration and Naturalization Service a person who has been convicted in the judge’s court of a crime or has been placed on deferred adjudication for a felony and is an illegal criminal alien as defined by Section 493.015(a), Government Code.”

Petitioner requested records related to this statute from the Travis County district judges who hear criminal cases, and the judges denied the request for the following records:

1. Written procedures for making reports of convictions of criminal aliens to federal immigration authorities as required by Article 2.25;
2. Written procedures for determining the immigration status of persons convicted in the courts; and
3. Correspondence between the courts or their staff and the U.S. Immigration and Naturalization Service or U.S. Bureau of Immigration and Customs Enforcement.

The judges denied the request on the grounds that the records were not covered by Rule 12 because the records pertain to cases that are adjudicated by the courts and therefore are not judicial records. Rule 12.2(d) defines a judicial record as one made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function.

Several statutes require courts or clerks to report the convictions of certain persons to regulatory agencies with enforcement powers over those persons. See, for example, Code of Criminal Procedure (CCP) article 42.011 (report to Texas Commission on Law Enforcement Standards and Education about felony committed by law enforcement officer); CCP article 42.018 (report to Texas State Board for Educator Certification about offenses committed by certified teacher); Occupations Code Section 301.409 (report to Texas Board of Nurse Examiners about offenses committed by licensed nurse); CCP article 42.0181 (report to Texas Department of Insurance about offenses

committed by insurance agents); Occupations Code Section 160.101 (report to Texas Department of Public Safety about offenses committed by physician). The subject matter of each of these required reports is the outcome of an adjudicated case that was before the court. The clerk of the court is the custodian of those case records and would have the duty to make the required reports, even in a situation such as CCP article 2.25, which nominally requires the judge to make the reports.

We agree with the judges that the reports that comply with CCP article 2.25 are made or maintained by a court in the regular course of business and pertain to its adjudicative function, so they would not be subject to Rule 12. Accordingly, correspondence that constitutes those reports may be withheld by the judges.

On the other hand, documents related to general procedures for complying with the reporting duty would be administrative in nature and would not pertain to the court's adjudicative function. Similarly, general correspondence between the courts and the recipients about the reporting requirement would be administrative in nature and would not pertain to the court's adjudicative function. Public access to documentation of the processes and procedures used by a court to comply with a statutory mandate is essential for compliance with the mandates of the Texas Constitution that the public interests are best served by open courts. *See* Rule 12.1. Accordingly, we grant the petition for access to such records.