

Before the Presiding Judges of the Administrative Judicial Regions
Per Curiam Rule 12 Decision

APPEAL NO.: 23-011

RESPONDENT: 471st District Court, Collin County

DATE: October 2, 2023

SPECIAL COMMITTEE: Judge Stephen Ables, Chair; Judge Ana Estevez; Judge Alfonso Charles; Judge Susan Brown; Judge Missy Medary¹

Petitioner requested from Respondent “all communications, notes, or references between [the judge of Respondent court] and any person referencing” a certain name. Petitioner indicated that the request was “not related to adjudicative matters, has no bearing on any current case, and should encompass the last 4 years.” Respondent informed Petitioner that it did not have any responsive judicial records subject to disclosure, save the request itself. Petitioner then timely appealed Respondent’s response and requested a hearing and review of Respondent’s determination. In its petition, Petitioner alleged that Respondent had, at some point during its exchanges with the Petitioner, accused Petitioner of engaging in certain *ex parte* communications but had not provided the communications as part of its disclosure. Respondent submitted a reply to the Petition reiterating it had no judicial records to disclose to Petitioner, save the records request itself. Respondent also addressed Petitioner’s contentions regarding the *ex parte* communications, which involved a message sent to, but unread by, the Respondent. Respondent noted that the communication in question was sent to the Respondent’s “personal, private messaging account” which did not belong to the court, was “not utilized by or for the Court at all, let alone in its regular course of business,” and were not judicial records. In a reply to the Respondent’s reply, Petitioner asked the special committee to request all documents from the Respondent to determine what was and was not a judicial record, in part because of Respondent’s distinction between communications received by its “official” and “personal” accounts.

We first address Petitioner’s request for a hearing on Respondent’s determination. Rule 12.9 controls relief from denial of access to a judicial record, and the special committee’s authority under Rule 12 is limited to that given to us to “review the petition and the record’s custodian’s response” and to “determine whether the requested judicial record should be made available” under Rule 12 to a petitioner. *See* Rule 12.9(g). There is no mechanism under Rule 12.9 permitting a hearing regarding a petition. Accordingly, Petitioner’s request for a hearing is denied.

Next, we consider Petitioner’s request for a full review of all relevant documents held by Respondent to determine what is and is not a judicial record. Rule 12 does not distinguish between “personal” and “official” communications accounts for judicial records purposes. Rule 12 concerns “judicial records,” those made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. *See* Rule 12.2(d). The public/private status

¹ Judge Medary did not participate in the special committee’s decision.

of a communications account through which a judicial record flows is irrelevant for Rule 12 purposes. What matters is the status of the record being sent.

Though Respondent denies having judicial records in its possession, based on Respondent's assumptions regarding the status of messages sent to or from a personal communications account, we direct Respondent to provide to the special committee a sample of potentially responsive records, if any, from its private messaging account that may have been made or are being maintained in Respondent's regular course of business, other than the *ex parte* communication referenced by Petitioner,² and a list of any exemptions Respondent believes apply. We request Respondent provide this records sample to us within 10 days of the issuance of this decision for our *in camera* review and final decision.

If no potentially responsive records exist, we request Respondent inform the special committee and Petitioner of this fact, and the appeal is dismissed.

² Based on the subject line of the *ex parte* communication Petitioner and Respondent discuss in this appeal, we agree that the message is not a judicial record subject to Rule 12 because it is a record related to a matter pending before a court.