

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

APPEAL NO.: 19-016

RESPONDENT: Eighth Administrative Judicial Region

DATE: December 9, 2019

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Kelly G. Moore; Judge Alfonso Charles; Judge Susan Brown; Judge Ray Wheless

Petitioner requested from Respondent a copy of any judicial record that the presiding judge of the region had approved and signed which showed any local county plans, local county rules, or local county procedures that must be followed by the judges of Somervell and Johnson counties. The presiding judge informed Petitioner that it was his understanding that the only local rules that had been adopted by the courts serving Johnson and Somervell counties were the counties' Indigent Defense Plans and provided a web address where Petitioner could access the counties' Indigent Defense Plans. He also informed Petitioner that he did not believe Rule 12 applied to local rules because access to them is controlled by the Texas Rule of Civil Procedure or the Texas Code of Criminal Procedure and are excluded from Rule 12 under Rule 12.3, and he informed Petitioner that he was not the custodian of the requested records. Petitioner then filed this appeal and requested expedited review. We did not grant Petitioner's request for expedited review.¹

Petitioner asserts that Respondent's reply to his request was a "partial denial of complete access to the requested judicial records" and that Respondent failed to provide proper notice of denial and information regarding Petitioner's right to appeal. Petitioner also asserts that Respondent "declined to give an opinion regarding whether the counties' local rules must be followed" and asks this special committee to conclude that Respondent failed to provide complete access to the requested records because the "presiding judge failed to acknowledge that the judges of Johnson and Somervell counties are required to follow their publicly posted Indigent Defense Plans."

We first address whether the requested records are subject to Rule 12. A record is subject to Rule 12 if it is one that is "made or maintained by or for a court or judicial agency in its regular course of business *but not pertaining to its adjudicative function*, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." (Emphasis added.) Rule 12.2(d).

A court's local rules of procedure specifically address the processing of cases; thus, they relate to a court's adjudicative function and are not subject to Rule 12 when maintained by a court. However, a presiding judge's review and approval of local rules submitted by the region's courts for the presiding judge's approval is an administrative function, not an adjudicative one. Therefore, if a

¹ We note that the documents at issue in this appeal are attached to the petition; thus, there is no need for an expedited appeal.

regional presiding judge maintains in the region's office a copy of the rules that have been signed by the presiding judge, they are being maintained as records related to the presiding judge's administrative function and are subject to Rule 12. The fact that the Texas Rules of Civil Procedure or the Texas Code of Criminal Procedure control or discuss a court's duty to provide access to or post the rules does not alter our conclusion that a copy of the rules that was signed and approved by the presiding judge and maintained by the administrative judicial region is subject to Rule 12.

We next address Petitioner's claim that Respondent denied him the records he requested and failed to provide the notice of denial required by Rule 12.8. Respondent informed Petitioner that he was not the custodian of the requested records but provided Petitioner a link to a website where they could be accessed. We do not believe that Respondent denied Petitioner access to the requested records when Respondent directed Petitioner to a link on a website where they could be downloaded.² This is an efficient way to make records available for inspection and we do not want to discourage judicial officers from handling Rule 12 requests in a manner that is expeditious and, in many instances, satisfies the requestor. However, if a requestor does not want to access requested records from a website, the requestor should inform the records custodian, and if the records exist and are maintained by the records custodian, then the records custodian must either provide the requested records in the manner or form desired by Petitioner or deny the request and provide the requestor with the appropriate notice of denial. Petitioner did not inform Respondent that the response did not satisfy his request. Accordingly, we conclude that Respondent did not deny Petitioner's request for records by referring him to a website to access the requested records.³

Lastly, we address Petitioner's request that this special committee determine that Respondent failed to provide complete access to the requested records because the presiding judge failed to acknowledge that the judges of Johnson and Somervell counties are required to follow their Indigent Defense Plans. Petitioner misunderstands the purpose of Rule 12. Its purpose is to provide the public access to information in the judiciary and it establishes procedures for requesting and providing access to judicial records. Rule 12 does not require a judge to opine on any matter or acknowledge the validity of assertions posed by requestors.

For the reasons discussed above, the petition is denied.

² Petitioner's request states that the requested documents may be provided in electronic format.

³ Petitioner also asserted that Respondent should have determined who the custodian of the records is and refer the request to the appropriate records custodian under Rule 12.6(f). We do not address this point since we have concluded that Respondent attempted to provide the requested records by referring Petitioner to a website where he could access the requested records.