

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

**APPEAL NO.:** 24-017

**RESPONDENT:** 409th District Court, El Paso County

**DATE:** February 3, 2025

**SPECIAL COMMITTEE:** Judge David Evans, Chair; Judge Alfonso Charles;  
Judge Susan Brown; Judge Sid Harle; Judge Missy Medary

Petitioner sent to the Office of Court Administration (OCA) an email alleging various acts of judicial misconduct by Respondent and seeking certain records. Not being the custodian of the records in question, OCA forwarded Petitioner’s message to Respondent, which included a request for the following records:

1. All records related to Respondent’s “oversight and communications regarding the 409th District Court, as well as the Walmart mass shooting case (Case Number: 2020-0D0-2631” [Item 1]; and
2. Documentation detailing “the legal authority and total expenditures associated with the appointment of” certain ad litem counsel, “including a full accounting of taxpayer funds used in connection with the case” [Item 2].

The El Paso County Attorney’s Office responded to Petitioner on Respondent’s behalf. For the records listed in Item 1 above, Respondent informed Petitioner that the request was in part overly broad and failed to provide the level of detail necessary to identify specific records. Respondent also alleged that the request was in part not subject to disclosure under Rule 12.3(b), was in part exempt from disclosure under various Rule 12.5 provisions, and that compliance with the request would substantially and unreasonably impede the routine operation of the court. For the records listed in Item 2 above, Respondent stated that it was not the custodian of the records for the information sought. Respondent suggested to Petitioner that it submit a Public Information Act request to the El Paso County Human Auditor’s Office. Petitioner appealed the denial of its requests, complaining that the El Paso County Attorney could not represent the Respondent because it had a “direct conflict of interest regarding the very subject of [Petitioner’s] request” and asking that OCA investigate the submission “to prevent further interference by the El Paso County Attorney’s Office with [Petitioner’s] requests and legal rights.” The appeal did not otherwise contest Respondent’s reasoning in denying access to the requested records. Respondent did not submit a response to the petition for review.

We first address Petitioner’s contention that the El Paso County Attorney’s Office is unable to represent the Respondent in the instant appeal. The use of counsel by a respondent does not change records custodianship under Rule 12.2(e). *See* Rule 12 Dec. No. 23-012. Government Code Section 45.171 charges the El Paso County Attorney with representing officials of El Paso County in civil matters, and we disagree that the use of the county attorney creates a conflict of interest in

this appeal.

We next address Petitioner's requests. Part of Petitioner's Item 1 request seeks all records related to Respondent's "oversight and communications regarding . . . the Walmart mass shooting case (Case Number: 2020-0D0-2631)." (Emphasis added.) The threshold issue in a Rule 12 appeal is whether the requested records are "judicial records," which are defined by Rule 12.2(d) as follows:

"Judicial record means a record 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.)

Petitioner's request for records related to the Walmart mass shooting case are not judicial records under Rule 12.2(d), as they are records created in connection with a matter that is or has been before a court. Because the records are not judicial records, we can neither grant the petition in whole or in part, nor sustain the denial of access to these requested records. We need not consider Respondent's applicability and exemption claims for denying access to the records. The balance of the Item 1 request is for "oversight and communications regarding the 409th District Court" generally. In reply, Respondent informed Petitioner that the "broad scope of your request fails to provide the level of detail necessary to reasonably identify specific records." Rule 12.6(a) requires a request for judicial records to "include sufficient information to reasonably identify the record requested." We agree with Respondent that the general request embedded in the Item 1 request does not contain the necessary detail to identify potentially responsive records, and we sustain Respondent's denial of access on this portion of the Item 1 request.

In response to Petitioner's Item 2 request, Respondent notified Petitioner that it was not the custodian of records of the sought-after information. Respondent then provided Petitioner with contact information for the El Paso County Human Auditor's Office and suggested that Petitioner consider submitting a Public Information Act request for the information. Because Respondent indicated that it is not the custodian of the records requested, Rule 12 is satisfied for the Item 2 request.<sup>1</sup> For Petitioner's Item 2 request, then, the petition is dismissed.

In sum, a portion of Item 1 records are not judicial records and the appeal on this point is dismissed, and for the balance of the Item 1 records we sustain the denial of access. For the Item 2 records, the petition is dismissed.

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<sup>1</sup> We note that Rule 12.6 of the Rules of Judicial Administration directs a judicial officer who receives a request for *judicial records* not in his or her custody to both ascertain who the custodian of the records is and, if so ascertained, to refer the request to that person. From the face of the Item 2 request, it is likely that the records in question would not be "judicial records" under Rule 12.2(d), and thus Rule 12.6 would not apply. Respondent would not be obligated to forward Petitioner's request, and Respondent's provision of Public Information Act contacts goes beyond what Rule 12 mandates.