

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 25-010

**RESPONDENT:** El Paso Criminal Law Jail Magistrate

**DATE:** July 2, 2025

**SPECIAL COMMITTEE:** Judge David L. Evans, Chairman; Judge Ana Estevez; Judge Susan Brown; Judge Ray Wheless; Judge Dib Waldrip

### Majority *Per Curiam* Decision:

Petitioner requested from Respondent copies of documents “which contain information regarding the work performed, hours worked, hearings conducted and/or dispositions of cases by each [criminal law jail] magistrate” in February 2025. The Respondent, by email timestamped at 3:10 PM MST on April 1, 2025, released to Petitioner certain responsive records but withheld from disclosure the judicial calendar records. Respondent cited Rule 12.5(b) (Security Plans) and Rule 12.5(h) (Judicial Calendar Information) to justify the withholding. On May 2, Petitioner mailed and emailed his appeal to the Office of Court Administration.

In its reply to the petition, Respondent urges the special committee to deny relief on the grounds that Petitioner’s appeal was not timely filed under Rule 12.9(c).<sup>1</sup> Specifically, Respondent argues that because the denial was provided on April 1, the 30-day window for appealing the denial closed on May 1. Because Petitioner filed the appeal on May 2 rather than May 1, Respondent reasons, the appeal was untimely. In a follow-up response to Respondent’s reply, Petitioner concedes that Respondent emailed the denial of access letter on April 1 but argues that because he did not “actually see” the response until April 2, the appeal was filed “within the 30-day period” he had “actual knowledge” of the denial (April 2 to May 2).

We agree with Respondent that Petitioner’s appeal is untimely. Rule 12.9(c) reads as follows: “The petition must be filed not later than 30 days after the date that the petitioner *receives* notice of a denial of access to the judicial record” (emphasis added). Petitioner and Respondent agree that Respondent’s email disclosing records and withholding judicial calendar records was sent to and appeared in Petitioner’s email inbox on April 1; where the parties disagree is in whether that date is operative for Rule 12.9(c) computation purposes. This question presents a matter of first impression for the special committee and we adopt the approach embedded in Rule 21(f)(5) and Rule 21a(b)(3) of the Texas Rules of Civil Procedure, which provide that an electronically filed document is generally “deemed filed” and “electronic service is complete” when *transmitted* to the filing party’s electronic filing service provider. A Rule 12 notice of denial of access electronically transmitted to a petitioner is deemed received at the time it is transmitted to document requestor. Affixing electronic receipt for Rule 12.9(c) computation to the time of

---

<sup>1</sup> Respondent also submitted a sample of the responsive records withheld from Petitioner for our *in camera* review in the event we concluded the appeal was timely filed.

message transmission provides more predictability and stability in computation than the method proposed for adoption by Petitioner, which would require an examination into whether or when a petitioner opened an email or clicked on a PDF inside of an email.

Additionally, even if the special committee were to find the appeal timely, we would agree with Respondent that the judicial calendar records sought by Petitioner are exempt under Rule 12.5(b), which exempts from disclosure any record the release of which would jeopardize the security of an individual against physical injury. Past schedules may be predictive of future schedules, and having reviewed the records submitted to us for our *in camera* review, we would agree that the calendar information sought here is exempt from disclosure.

Because we conclude that the petition for review is untimely, the petition is dismissed.

Concurring Statement by Judge Ana Estevez:

I agree with the majority that the petition for review should be dismissed because it was not filed timely. However, having concluded that the appeal should be dismissed, it is my position that the merits of the appeal should not be addressed and decline to do so.