

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 25-013

RESPONDENT: Presiding Judge, Eighth Administrative Judicial Region

DATE: July 23, 2025

SPECIAL COMMITTEE: Judge Missy Medary, Chair; Judge Ray Wheless; Judge Dib Waldrip; Judge Sid Harle; Judge Ana Estevez

As part of a series of requests regarding the certification of and assignment of a visiting judge based in the Eighth Administrative Judicial Region, Petitioner requested from Respondent the following:

- “All emails, letters, internal and external communications, and any other correspondence related to [the] 8th AJR and [the] 325th district court between Oct 1 2024 to Nov 2024, preceding and leading to the request, approval and assignment of [a certain] order[;]
- Copies of any documents, attachments, reports, memos, notes, or other records associated with these communications[;]
- Any records of meetings, including agendas, minutes, notes, or other documentation where the subject matter was discussed[; and]
- Any certification mandated under [Government Code Sections] 74.045. 74.0551, 74.055 and annual proof that the judge has completed in the past state fiscal year the educational requirements.”

In an initial response to the request, Respondent denied Petitioner’s request for each set of records on the grounds that they were not “judicial records” as defined by Rule 12.2(d). In its petition for review, Petitioner objected to the denial decision. In appeal materials provided to the special committee, Petitioner argued that the requested records were in fact “judicial records” under Rule 12 because the subject matter of the records concerned administrative matters related to the assignment of a visiting judge to a particular court. Put another way, Petitioner argued, the records concerned logistics and court administration, not any adjudicative matters. After it received the petition, Respondent provided the special committee with an amended reply to Petitioner’s request in which Respondent reiterated that the first three categories of records requested were denied because they were not judicial records; for the last category, however, Respondent informed Petitioner that this requested category was duplicative of an earlier request for which Respondent had provided Petitioner with responsive documents. Respondent provided the special committee with the documents disclosed to Petitioner. In its appeal materials, Petitioner requested the special committee hold a public evidentiary hearing regarding its appeal and argued that, because Respondent’s disclosed records did not cover the first three categories of requests sought, there was no duplication of its request, which remained outstanding.

We first address Petitioner’s public evidentiary hearing request. 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, e.g.*, Rule 12.9(g), Rule 12 Dec. No. 23-011. There is no mechanism under Rule 12.9 permitting a hearing regarding a petition. *See* Rule 12 Dec. No. 23-011. Accordingly, Petitioner's request for a public evidentiary hearing is denied.

We next address the denial of access to the records deemed by Respondent to fall outside of Rule 12.2(d)'s definition of "judicial record." Respondent ultimately denied Petitioner access to the first three categories of requested records at issue here on the grounds that they were not "judicial records" as defined by Rule 12.2(d). 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 objects to Respondent's characterization of these records as non-judicial records because they "concern whether to request, approve, and staff a visiting-judge assignment to the 325th District Court[] and how to arrange logistics for that assignment." In the Petitioner's view, these records concern court operations because "they do not resolve any party's claims or defenses in a pending case." Petitioner directs us to several Rule 12 Decisions that allegedly establish that "assignment paperwork, internal emails, and other operational correspondence are presumptively open because they 'document the administration of the courts rather than any adjudicative act.'" Petitioner's reading of our prior Rule 12 Decisions is flawed, as we have previously rejected arguments narrowing the concept of the "adjudicative function" down to the resolution of cases. *See, e.g.*, Rule 12 Dec. Nos. 04-003, 09-006, 10-001, 14-003, 17-018. Moreover, we have previously concluded that how a court processes its cases pertains to the adjudicative function. *See* Rule 12 Dec. Nos. 09-006, 17-018, 19-006, and 19-026. At bottom, the assignment of a visiting judge to a particular court as well as the logistical records surrounding that assignment directly bear on the processing of cases. We agree with Respondent that the first three categories of records requested by Petitioner pertain to Respondent's adjudicative function and are not judicial records within the meaning of Rule 12.2(d).

Finally, we address the last category of records in Petitioner's appeal. For this category of records, Respondent informed Petitioner that the request was duplicative of a request to which Respondent had previously disclosed responsive records. Respondent provided the special committee with Petitioner's prior request, and we have compared it to the request at issue in the instant appeal. We have also reviewed the records disclosed to Petitioner as responsive to the prior request, and we agree with Respondent that the disclosed records are responsive to the request at issue in this appeal. Rule 12, as a matter of policy, carefully balances the public's robust access to information in the judiciary and the constitutional mandates of open courts with the judiciary's needs for efficient operations. *See, e.g.*, Rule 12.1, Rule 12.8, and Rule 12 cmt. 3. When a records custodian has previously disclosed records responsive to a request that are also responsive to a later request, the records custodian may, consistent with Rule 12.8, deny the later request. Rule 12 does not require a records custodian to repeatedly produce the same records to substantively

identical requests.¹

In sum, for the first three categories of records of Petitioner's request, we agree with Respondent that the requests are for records outside the scope of Rule 12.2(d)'s "judicial records." Accordingly, the special committee can neither grant the petition in whole or in part nor sustain any denial to these requested records. And for the remainder of the petition, we conclude that Respondent has previously provided Petitioner with records responsive to the request, and the petition is denied.

¹ Because Respondent has previously disclosed records responsive to Petitioner's fourth category of records, we do not take up the question of whether the records at issue are or are not "judicial records" as defined by Rule 12.2(d).