

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 22-003

**RESPONDENT:** 296<sup>th</sup> District Court

**DATE:** June 24, 2022

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chair; Judge Missy Medary; Judge Dean Rucker; Judge David L. Evans; and Judge Ana Estevez

Petitioner requested the following from Respondent:

1. “Any version of the attached letter or any similar letters that you received from [named individual]. If, for example [named individual] sent a different letter on a different date that discusses matters related to the Federal Bureau of Investigation (‘FBI’), then that letter should be made available for inspection.”
2. “Any records, letters, communications, or items that you received from [named individual] that are not part of the court record.”
3. “Any records indicating whether you shared the attached letter and with whom (*e.g.* with the FBI, the district attorney, or any of the parties or counsel in [style/number of specific case]). Likewise, if you received other record, letters, communication or items from [named individual] that are not part of the court record, I wish to see records indicating whether and with whom they were shared.”
4. “The flash drive referenced in the attached letter from [named individual].”
5. “Any records reflecting the disposition of the flash drive referenced in [named individual’s] letter. If, for example, the flash drive was discarded or forwarded somewhere else, then records reflecting that should be produced.”
6. “Any communication between your office and anyone affiliated with the U.S. Department of Justice, including the FBI, since January 1, 2018.”

Respondent informed Petitioner that the information requested in Items 1 through 5, to the extent they existed, were part of the Respondent’s court record. Respondent also informed Petitioner that Rule 12 did not require disclosure of the information requested in Item 6. Petitioner then filed this appeal.

In response to this appeal, Respondent asserted that the information requested in Items 1 through 5 relate to a case in his court, the parties to the case, and testimony that has been or will be given in the pending case and that, to the extent it exists, the requested information was created produced, or filed in connection with the pending case. He also noted that he did not have any records responsive to Item 6.

Rule 12 governs access to judicial records and Rule 12.2(d) defines a “judicial record” as 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.” Additionally, “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.” Such records are case records. See Rule 12.2(d) and Rule 12 Decision No. 00-001.

The requested information described in Items 1, 4, and 5 above all refer to a letter or information related to a matter that is currently pending on Respondent’s docket.<sup>1</sup> Based on the request, we conclude that any document responsive to the request would have been created, produced, or filed in connection with a matter on Respondent’s docket and would not be subject to Rule 12. This special committee has no authority under Rule 12 to issue a decision regarding access to records that are not subject to Rule 12.

Item 2 is a request for letters, communications, or items received from a party in a case pending on Respondent’s docket that are not part of the court record and Item 3 is for any records indicating whether the judge shared a specific letter from a party in a case pending on Respondent’s docket, including records, letters, communication, or items from the party that are not part of the court record. We note that an item that is not part of a court record may, nevertheless, have been created or produced in connection with a case and fall outside of Rule 12’s definition of a judicial record. Respondent informed us that all the requested information, to the extent it exists, was filed, created, or produced in connection with a case on Respondent’s docket. Thus, those records are not subject to Rule 12. However, if Respondent has other letters, communications, or items received from the named party in the case that are not related to the case, they would be subject to Rule 12 and should be released unless they are exempt from disclosure under Rule 12.5. If such records exist and they contain information that is exempt from disclosure under Rule 12.5, we give Respondent 14 days from the date of this decision to submit a written response specifying any exemptions claimed and to tender the judicial records for our *in camera* review.

Lastly, Respondent noted that he did not locate any records responsive to Item 6 and asserted that he did not believe Rule 12 intended to cover these types of records. Because Respondent does not have any records responsive to this request, we need not address this issue.

In summary, we are without authority to issue a decision regarding the requests in Items 1, 4, and 5. There are no records responsive to Item 6; therefore, we decline to address any arguments regarding the applicability of Rule 12 to these records. If Respondent has records responsive to Items 2 and 3 that were not created or produced in connection with a case, we grant Petitioner access to these records. If the responsive records contain information that is exempt from disclosure under Rule 12.5, we give Respondent 14 days from the date of this decision to submit a written response specifying any exemptions claimed and to tender the judicial records for our *in camera* review.

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<sup>1</sup> The reference line on the letter provided by Petitioner lists a specific case pending on Respondent’s docket.