

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 25-012

RESPONDENT: Bexar County Domestic Relations Office

DATE: August 22, 2025

SPECIAL COMMITTEE: Judge David L. Evans, Chairman; Judge Ben Woodward; Judge Alfonso Charles; Judge Susan Brown; Judge Robert Trapp

Petitioner requested from Respondent, through the Bexar County Open Records Request Portal, the following documents:

- Current or past versions of Respondent’s custody evaluator list, including any drafts or circulation copies;
- Logs or reports (if available) indicating frequency of evaluator appointments; and
- Internal communications, memos, or meeting note regarding the following:
 - Formation or update of the evaluator list;
 - Inclusion of cost warnings or disclaimers (such as those used by Tarrant County);
 - Suggestions around mediation as a first option;
 - Sharing of Bar-funded legal materials with certain support networks or shelters; and
 - Any discussions of coordination on the-above referenced matters involving certain judges.

General Counsel with the Bexar County Civil District Courts, responding on behalf of Respondent, explained that although Petitioner had requested records from Respondent under the Public Information Act, the request sought judicial records governed by Rule 12. General Counsel then disclosed to Petitioner certain records responsive to the requests, noted that it lacked responsive records for some categories, and withheld other records on Rule 12.5(e) (*Applicants for Employment or Volunteer Services*), 12.5(f) *Internal Deliberations on Court or Judicial Administration Matters*), and 12.5(k) (*Investigations of Character or Conduct*) grounds.

In a follow-up email clarifying the request, Petitioner asked General Counsel to confirm whether Respondent maintained “any internal communications, drafts, emails, notes, or documents” that reference (1) the custody evaluator list (published or draft versions), (2) evaluator appointments or recommendations, (3) “concerns, feedback, or discussions regarding evaluator practices, appointment frequency, or cost warnings,” or (4) “any related internal discussions about the formation or use of the evaluator list.” Petitioner further noted that it was “specifically asking whether [Respondent] has responsive communications in these categories, regardless of whether

[Respondent] considers itself the formal custodian of the evaluator list itself.” In response, General Counsel stated it had provided Petitioner with all non-exempt, responsive records; General Counsel further reiterated the custody evaluator “working list” and internal discussions related to the list were exempt from disclosure because those records contained information that was exempt from production.

Petitioner timely filed a petition for review, complaining that Respondent, through General Counsel, had “misclassified administrative records as judicial under Rule 12 to avoid Public Information Act obligations,” had invoked “blanket exemptions” under Rule 12.5, had not provided “a document-specific explanation or index” as required by Rule 12.6(c), and had “mischaracterized [the] clarified request and declined to acknowledge key categories entirely.” Specifically, Petitioner complained that its clarified requests “regarding evaluator discussions, cost disclaimers, mediation language, and judicial coordination were minimized or ignored.” In its reply to the petition, Respondent contested Petitioner’s misclassification claim, citing Attorney General opinions O.R. 2017-01385 and O.R. 2006-1383 to justify its position that Respondent’s records were subject to Rule 12. Respondent also contested Petitioner’s assertion that Rule 12 required a “document-by-document” index of withheld records and that it had not properly justified withholding of records. According to Respondent, it had identified the withheld records with sufficient detail to demonstrate why the records were withheld, and it offered the document to the special committee for *in camera* review for examination. Respondent also challenged Petitioner’s contention that it had “minimized” or “ignored” the follow-up request, noting it had informed Petitioner that it did not have records responsive to some to some of the request and that other responsive records were exempt from disclosure. Petitioner submitted a supplemental reply to Respondent’s response to the petition requesting the special committee grant the petition or, at a minimum, order the production of a Vaughn index of withheld materials with specific exemption claims.

We first address Petitioner’s Rule 12 “misclassification” argument, as the threshold issue in a Rule 12 appeal is whether the requested records are “judicial records” subject to Rule 12 governance. Whether a requested record is a judicial record is controlled by Rule 12.2(d), which defines a “judicial record” as “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.” A judicial record can be held by a court or a “judicial agency,” which is defined by Rule 12.2(b) as “an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court.” In short, the determinative question in the instant appeal is whether Respondent is a judicial agency withholding a judicial record subject to Rule 12 governance.

The requested information pertains to records of persons on the “Bexar County Civil District Court Child Custody Evaluators” list maintained by Respondent. We agree with the Attorney General’s reasoning in O.R. 2017-0385 that Respondent acts as an arm of the Bexar Civil Courts, and we conclude that Respondent is a judicial agency for purposes of Rule 12 *to the extent it is maintaining judicial records for the judiciary*. Child custody evaluation is governed by Subchapter D, Chapter 107, Family Code, which defines “child custody evaluation” as “an evaluative process ordered by a court in a contested case through which information, opinions, recommendations, and answers to specific questions asked by the court” are gathered. *See* Section 107.101(1), Family Code. Section 107.104 outlines the minimum qualifications of a child custody evaluator and Section 107.105 makes it incumbent on a *court* to determine whether the

qualification of a child custody evaluator satisfy the requirements of Subchapter D. By statute, then, the child custody evaluator list pertains to a court's adjudicative function. Because the records at issue pertain to a court's adjudicative function, the record falls outside Rule 12's definition of "judicial record" and we have no need to consider Respondent's exemption claims.

Accordingly, the special committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records, and the appeal is dismissed.