

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 15-009

**RESPONDENT:** Judicial Branch Certification Commission

**DATE:** September 29, 2015

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge David Peebles; Judge Dean Rucker; Judge Kelly G. Moore

Petitioner requested from the Judicial Branch Certification Commission (the “Commission”) “any and all records in possession of the JBCC, the JBCC advisory boards and/or the JBCC investigator relating to the investigation and resolution of complaints.” The Commission provided the records responsive to the request, but sensitive information, such as dates of birth and medical and financial information, was either redacted or withheld. Petitioner is appealing the denial of access to the information that was not disclosed and asks for clarification as to whether the Commission’s records are judicial records subject to Rule 12 of the Rules of Judicial Administration. Petitioner also suggests that the Commission is not a judicial agency subject to Rule 12 and is instead subject to the Public Information Act (Tex. Gov’t Code Ch. 552).

In its response, the Commission maintains that the requested records are not judicial records under Rule 12 and submits that this committee is without authority to consider this appeal. The Commission disagrees with Petitioner’s suggestion that it is a governmental body subject to the Public Information Act (PIA) rather than a judicial agency that is subject to Rule 12 but asserts that this committee should not address this issue because it lacks the authority to consider this appeal.

Rule 12 governs requests to inspect or copy “judicial records” of a “judicial agency.” Before deciding whether records are “judicial records” subject to Rule 12, we must first determine whether the agency that maintains the records is a “judicial agency” subject to Rule 12. Rule 12 defines a “judicial agency” as “an office, board, commission or other similar entity that is in the Judicial Department and that serves an administrative function for a court.”

Rule 1.5 of the Rules of the Judicial Branch Certification Commission (JBCC Rules) adopted by the Supreme Court of Texas on September 1, 2014, provides that the Commission, as a judicial branch entity, is not a governmental body subject to the PIA and that access to its records is governed either by Rule 12 or by applicable statutory or common law.<sup>1</sup> The purpose of the Commission is to oversee the registration, licensing and certification of court professions such as process servers, court reporters, guardians and licensed court interpreters. *See* Tex. Gov’t Code Chs. 151 and 152 and the JBCC Rules. In this role the Commission serves a basic administrative function for all the courts of Texas. Accordingly, we conclude that the Commission is a judicial branch agency for purposes of Rule 12 and that access to its records is governed by Rule 12.

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<sup>1</sup>This committee is unaware of any statutory or common law that governs access to the Commission’s records.

Though we conclude that the Commission is a judicial agency under Rule 12, not all records maintained by a judicial agency are “judicial records” subject to Rule 12. Rule 12.2(d) provides:

“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.

Thus, the pivotal issue regarding access to the records in this appeal is whether the Commission exercises an adjudicative function when it investigates and resolves complaints regarding its licensees. In Rule 12 Decision No. 10-001, the committee decided that complaint records maintained by the PSRB were not judicial records subject to Rule 12 because the PSRB exercised an adjudicative function when it investigated and resolved complaints from the public. The Commission has assumed all of the duties of the PSRB and investigates and resolves complaints filed regarding process servers, court reporters, guardians and licensed court interpreters. We conclude that, like the PSRB before it, the Commission exercises an adjudicative function when it investigates and resolves complaints filed with the Commission and we conclude that the records maintained by the Commission related to these complaints are not judicial records subject to Rule 12.

In summary, the Commission is a judicial agency subject to Rule 12, but the records that are at issue in this appeal are not judicial records under Rule 12. Therefore, this committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.