

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 12-001

RESPONDENT: Judge Nancy Berger, 322nd Judicial District Court

DATE: May 30, 2012

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge David Peeples

In March of 2012, Petitioner sent a certified letter to Respondent requesting a copy of all audio recordings of a specific hearing held in Respondent's court. Petitioner filed this appeal stating that Respondent has failed to respond to Petitioner's written request.

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.)

The audio recordings at issue in this appeal pertain to a specific hearing held in a case in Respondent's court. Thus, they are case records, not judicial records as defined by Rule 12.2(d), and they are not covered under Rule 12.¹ Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.

¹ We note, however, that case records or court records which are not judicial records within the meaning of Rule 12 may be open pursuant to other law such as the common-law right to public access. See Rule 12 Decision 00-001.