

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 15-004

RESPONDENT: First Court of Appeals

DATE: July 2, 2015

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Billy Ray Stubblefield; Judge David Peeples; Judge J. Rolando Olvera

Petitioner requested records used to determine that costs for transcripts were paid in a specific case on appeal from the 269th District Court and records “supplemented” to the court for transcripts in the amount of \$535, \$356, \$40 and \$1,468 in a specific case on appeal from the 269th District Court. Respondent denied Petitioner’s request under Rule 12.5(j), Litigation or Settlement Negotiations, of the Rules of Judicial Administration and Petitioner appealed.

A “judicial record” is defined by Rule 12.2(d) 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.*” (Emphasis added.)

Records regarding the cost of a transcript in a specific case are created in connection with a case or matter that has been before a court; therefore, they are not “judicial records” as defined by Rule 12.2(d) and they are not subject to Rule 12.¹ *See* Rule 12 Decision Nos. 03-005 and 11-004. Accordingly, the records requested by Petitioner are not judicial records that are subject to Rule 12.

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 Decisions 00-001 and 00-003. We also note that the primary significance of a decision finding that a record is not subject to Rule 12 is that the Rule 12 procedures for responding to requests and appealing the denial of requests do not apply. Neither the fact that a record is not subject to Rule 12 nor a decision making this determination should be used as a basis for withholding records.

Because the records at issue are not judicial records under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.

¹ Petitioner has indicated that the requested records are the “subject matter of pending litigation.” Thus, even if the requested records were subject to Rule 12, they would be exempt from disclosure under Rule 12.5(j).