

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 15-006

RESPONDENT: Travis County Criminal Courts Administration

DATE: July 6, 2015

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge David Peebles; Judge Kelly G. Moore

Petitioner requested access to view all vouchers submitted during a two to four-year time period by a list of court appointed attorneys in which the attorneys submitted both a “Request for Payment for Services Rendered as Court Appointed Counsel” and an “Itemized Statement to Support Hourly Rate or Deviation from Fixed Rate.” Respondent agreed to give Petitioner access to the “Request for Payment for Services Rendered as Court Appointed Counsel” forms for all of the attorneys on Petitioner’s list but denied access to the second form under Rule 12.8(a)(2). Respondent maintained that complying with this portion of the request would substantially impede the normal and routine operations of the Travis County Auditor’s Office, acting as an agent of the judiciary, and cause an undue burden on the Auditor’s Office’s resources. Respondent also alleged that the forms contained information confidential under other law and the attorney client privilege and would have to be redacted. Petitioner then filed this appeal.

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.)

The records requested by Petitioner are forms submitted by attorneys who have served as court appointed counsel in cases before the criminal district courts in Travis County. They reference specific cases and have been submitted for approval to the judges in the cases. These records were created, produced and filed in connection with matters that are or have 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. *See* Rule 12 Decisions Nos. 03-005 and 11-004.

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.