

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-005

RESPONDENT: Office of Court Management – Harris County Criminal Courts

DATE: April 4, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield; Judge David Peeples; Judge Dean Rucker; Judge David L. Evans

Petitioner requested from Respondent records related to actions taken by the judges of the Harris County Criminal Courts at Law to remove Petitioner from the list of attorneys eligible for appointment under the Fair Defense Act Plan of the Harris County Criminal Courts at Law. Respondent denied Petitioner's request claiming the requested records are exempt from the Public Information Act and are exempt from disclosure under Rule 12.5(b) of the Rules of Judicial Administration because they relate to the internal deliberations of a court or judicial agency. Petitioner then filed this appeal.

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.)

In *Davis v. Tarrant County, Texas, et al*, 556 F.3rd 214 (5th Cir. 2009), the court considered whether a judge's selection of a person for inclusion on a list of attorneys who are eligible for appointment under the requirements of the county's Fair Defense Act plan is a judicial act for which a judge is entitled to judicial immunity. The court found that “the act of selecting applicants for inclusion on a rotating list of attorneys eligible for court appointments is inextricably linked to and cannot be separated from the act of appointing counsel in a particular case,” and that it “involve[s] the performance of duties which are intimately connected to a judge's adjudicatory role.” *Davis*, 556 F.3rd 214 at 226. We agree with this analysis and conclude that records related to the maintenance of a list of attorneys who are eligible for appointment under a county's Fair Defense Act plan are related to a judge's adjudicative function. Accordingly, the records at issue in this appeal are not “judicial records” as defined by Rule 12.2(d) and are not subject to Rule 12.

Because the records at issue in this appeal 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.