

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-017

RESPONDENT: Court of Criminal Appeals

DATE: September 28, 2017

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Missy Medary; Judge Dean Rucker; Judge David L. Evans; Judge Kelly G. Moore

Petitioner requested from Respondent a copy of “writ staff draft memoranda analyzing every claim an applicant asserts” related to four applications for writs of habeas corpus filed with Respondent. Respondent denied Petitioner’s request explaining that the records are exempt from disclosure under Rule 12.5(a) of the Rules of Judicial Administration. Petitioner then filed this appeal.

A “judicial record” subject to Rule 12 is one that is “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.) Rule 12.2(d).

Petitioner requested documents prepared by Respondent’s staff analyzing claims in cases filed with Respondent. The requested documents pertain to Respondent’s adjudicative function. Accordingly, they are not “judicial records” as defined by Rule 12.2(d) and they are not subject to Rule 12. *See* Rule 12 Decision No. 17-006.

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

¹ We note that if we had concluded that the records are subject to Rule 12, they would be exempt from disclosure under Rule 12.5(a) as records prepared by court staff regarding matters related to a judicial officer’s adjudicative decision-making process.