

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 13-002

RESPONDENT: 185th Judicial District Court

DATE: September 27, 2013

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard; Judge Billy Ray Stubblefield; Judge David Peebles; Judge Jeff Walker

Petitioner requested from Respondent a DVD, CD or videotape copy of a hearing that was conducted by video teleconference in the 185th Judicial District Court. Respondent denied Petitioner's request on the basis that the requested information is exempt from disclosure under Rules 12.5(a) and 12.5(i) of the Rules of Judicial Administration. 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.)

The recording of the video teleconference hearing that Petitioner has requested is of a hearing in a case filed in the 185th Judicial District Court. Thus, it relates to the 185th Judicial District Court's adjudicative function and is not subject to Rule 12 because it is not a "judicial record" as defined by Rule 12.2(d). 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 record at issue is not a judicial record under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested record.