

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 14-004

RESPONDENT: Ellis County Court at Law No. 2

DATE: October 10, 2014

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Olen Underwood;
Judge David Peeples; Judge David Evans; Judge Kelly G. Moore

Petitioner requested a copy of an audio recording made by Respondent's court reporter of events that transpired in Respondent's court on May 9, 2014. Respondent did not formally deny Petitioner's request nor did he provide the requested audio recording. Petitioner filed this appeal requesting review of Respondent's actions for compliance with Rule 12.

The threshold issue in a Rule 12 appeal is whether the requested record is a "judicial record," which is 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.)

We previously have held that audio recordings of court hearings are case records, not judicial records as defined by Rule 12.2(d). *See* Rule 12 Decision No. 12-001. Thus, any portion of the requested recording that consists of hearings conducted by Respondent on May 9th is not a judicial record under Rule 12.

In a letter attached to his appeal, Petitioner attempts to distinguish a portion of the requested recording by describing it as a recording of a conference unrelated to a specific case called by Respondent at the end of the day to discuss the discovery practices of the District and County Attorney's Office. Petitioner maintains that if that portion of the requested recording can be characterized as an administrative proceeding unrelated to a specific case, it should be released as a judicial record pursuant to Rule 12.

In his response to the appeal, Respondent has informed this committee that five days after receiving Petitioner's request for the audio recording Petitioner filed three Motions to Recuse Respondent and that the conference captured on the requested audio recording was the basis for the motions. Respondent also provided this committee copies of *subpoenas duces tecum* summoning Respondent's court reporter to appear at the hearings on Petitioner's Motions to Recuse and ordering her to produce the audio recording at issue in this appeal. Additionally, Respondent indicates that the recording was played during the hearings.

Having been required to be produced at three hearings pursuant to *subpoenas duces tecum* served on Respondent's court reporter, we find that the requested audio recording is not a "judicial record" under Rule 12.

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, if any, to the requested record.