

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 17-010

**RESPONDENT:** Harris County Clerk

**DATE:** September 6, 2017

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

Petitioner requested from Respondent a copy of “any post-it-notes or any other notes and their contents that were added to the files” in a specified case. Petitioner failed to receive a response and filed this appeal 30 days after submitting his request.

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).

Notes added to case files are records created in connection with a matter that is or has been before a court. Accordingly, the requested records are not “judicial records” as defined by Rule 12.2(d) and are not subject to Rule 12.<sup>1</sup> *See* Rule 12 Decision Nos. 03-005 and 11-004.

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.

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<sup>1</sup> 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.