

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-012

RESPONDENT: Caldwell County Clerk

DATE: October 5, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge David Peeples; Judge David L. Evans

Petitioner requested from Respondent a statement on official letterhead indicating that a case involving Petitioner had been disposed and that Petitioner did not owe the court any money in the case. After more than 30 days passed without receiving a reply from Respondent, Petitioner filed this appeal.

Rather than requesting a record that already exists, such as a docket notation by the judge, that would also contain the information Petitioner seeks and be subject to disclosure under the public's common-law right of access (*See* Rule 12 Decisions 00-001 and 00-003), Petitioner appears to be asking Respondent to create a record. Rule 12 does not require a records custodian to create a record. *See* Rule 12.4(a)(1). Additionally, if the record does exist, based on the description in Petitioner's request, it appears to pertain to a court case.

A "judicial record" is defined by Rule 12.2(d) as 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.)

Petitioner asked for information related to a specific case involving Petitioner. Accordingly, the record requested by Petitioner is not a "judicial record" as defined by Rule 12.2(d) and it is not subject to Rule 12. *See* Rule 12 Decisions Nos. 03-005, 11-004 and 15-006.

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.¹

¹ 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.