

Before the Presiding Judges of the Administrative Judicial Regions Per Curiam Rule 12 Decision

APPEAL NO.: 21-008

RESPONDENT: Harris County District Clerk

DATE: May 14, 2021

SPECIAL COMMITTEE: Judge Dean Rucker, Chairman; Judge Ray Wheless, Judge Olen Underwood, Judge Ana Estevez, Judge Alfonso Charles

Petitioner requested from Respondent copies of all emails sent to or received from a specific email domain address by certain email addresses maintained by Respondent. Respondent provided Petitioner a cost estimate for complying with the request and Petitioner filed this appeal under Rule 12.7(c) asserting the estimate is excessive.

The threshold issue in a Rule 12 appeal is whether the requested records are judicial records covered by Rule 12. Rule 12.2(d) defines a judicial record as a record 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.” We have dismissed prior appeals concerning records maintained by district clerks because the requested records were related to a court’s adjudicative function and, therefore, were not covered by Rule 12. We have also issued decisions concerning district clerk records concluding that the requested records were confidential by law. Only once, in Rule 12 Appeal Decision No. 10-004, has a special committee discussed whether a district clerk’s office is a judicial agency subject to Rule 12. In that decision, the special committee concluded that district clerk’s offices are judicial agencies because they are constitutionally created offices in the Judicial Department that serve an administrative function for the district courts of the county. The special committee in that decision, however, did not consider the following: 1) the records custodian of a judicial agency is its presiding officer (*see* Rule 12.2(e)(4)), 2) the presiding officer of a district clerk’s office is the district clerk, 3) district clerks are elected officials, and 4) Rule 12 does not apply to elected officials other than judges (*see* Rule 12.3(d)).

Because Rule 12 does not apply to elected officials other than judges, and district clerks are elected officials, Rule 12 does not apply to district clerks. Accordingly, we are without authority to issue a decision regarding records in the custody of Respondent, a district clerk, and must dismiss this appeal. Further, we instruct the Office of Court Administration to administratively dismiss any future appeals submitted to the Office in which the respondent is a district clerk or a district clerk’s office.