

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-009

RESPONDENT: The Honorable Jeff Walker, Presiding Judge

DATE: June 24, 2010

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard, Judge Olen Underwood, Judge David Peeples, Judge Dean Rucker

Petitioner provided Respondent a list of cause numbers and requested “a copy of the amount of excess proceeds on deposit in registry of the court” for each of the listed cases. Respondent informed Petitioner that the requested records are not subject to Rule 12 because they are “court” records, not “judicial” records. Respondent also informed Petitioner that the court clerk in each county is the custodian of the requested records and suggested that he submit his request for records to them. Petitioner has appealed pursuant to Rule 12.9 of the Rules of Judicial Administration and requests that we order Respondent to provide the requested records.

The threshold issue in a Rule 12 appeal is whether the 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 request is for records of excess proceeds available in the registry of the court for specific court cases. Deposits made to the registry of the court are done pursuant to court order and are directly related to a court case. Thus, the requested records are not judicial records as defined by Rule 12.2(d). They are case records and Rule 12 does not apply to them.¹ Additionally, Respondent is not the custodian of the requested records. The usual custodian of court records related to a specific case is the court clerk.

Accordingly, we are unable to grant the petition.

¹ Respondent also informed Petitioner that the requested records were subject to the Open Records Act. We note that the records of a court clerk that are assembled, maintained or collected for the judiciary are not subject to the Public Information Act (Chapter 552 of the Texas Government Code). However, they may be open pursuant to other law such as the common-law right to public access. For further discussion on both of these topics, see Rule 12 Decisions 10-004 and 00-001 and Office of the Attorney General Open Records Letter No. 93-764 (1993).