

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-001

RESPONDENT: 107th Judicial District Court

DATE: May 22, 2017

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

Petitioner requested copies of all orders authorizing payment of attorney's and expert fees in a specific case and payments made to the assigned judge who presided in the case. Petitioner also requested minutes of the court from July 1, 2011 through August 31, 2011. Petitioner has filed this appeal maintaining that Respondent did not reply to her request. Respondent was notified of this appeal but did not submit a response.

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.)

Orders authorizing payment of attorney's fees, fees for experts and minutes of a court's proceedings are records that are created, produced and filed in connection with matters that are or have been before a court. Therefore, they are not "judicial records" as defined by Rule 12.2(d) and they are not subject to Rule 12. *See* Rule 12 Decisions Nos. 15-006, 03-005, and 11-004.

Petitioner also requested copies of orders authorizing payment to a judge assigned to hear a specific case. Records approving payment of an assigned judge are maintained by the regional presiding judge who appointed the assigned judge. A judicial officer who receives a request for a judicial record that is not in his or her custody must promptly ascertain who the custodian of the record is, and if the judicial officer can ascertain who does have custody of the record, the judicial officer must promptly refer the request to that person and notify the requestor in writing of the referral. *See* Rule 12.6(f). Respondent should have referred this request to the appropriate regional presiding judge under Rule 12.6(f). We advise Respondent to be mindful of this provision when responding to future requests for records that are subject to Rule 12. Additionally, to expedite a response to Petitioner, we instruct the clerk of this special committee to refer the Petitioner's request for records authorizing payment of the assigned judge to the appropriate regional presiding judge.

Except for the record related to the compensation of an assigned judge, we conclude that the records at issue in this appeal are not judicial records under Rule 12. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to those records.¹ Additionally,

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

we remind Respondent to be mindful of the requirements of Rule 12.6(f) and we instruct the clerk of this committee to refer Petitioner's request for information related to the assigned judge's compensation to the regional presiding judge who made the assignment for an appropriate response.

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.