

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-010

RESPONDENT: Harris County District Clerk

DATE: September 13, 2011

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard; Judge David Peebles; Judge J. Rolando Olvera; Judge Jeff Walker

Petitioner submitted to the Harris County District Clerk's office an application for writ of habeus corpus for filing in the 248th District Court, but it was returned to Petitioner for failure to comply with the required form. Petitioner obtained a copy of an email between two employees of the Harris County District Clerk's office that states "[a]fter getting that note from Judge Campbell, stating the application was in fact an 11.07 writ, I was instructed by Paula to send back the application to Mr. [Petitioner's name] due to non-compliance with the format of the application." Petitioner then requested from Respondent a copy of the "note from Judge Campbell" referred to in the email. Respondent informed Petitioner that his request was for records of the judiciary that are not subject to the provisions of the Public Information Act and that they were unable to process his request in that manner. Respondent also directed him to the customer service division of the District Clerk's office for copies and inspection of the requested judicial records. After several unsuccessful attempts to obtain a copy of the "note from Judge Campbell," Petitioner filed this appeal.

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." *See* Rule 12.2(d).

The record at issue in this appeal is a communication from a judge regarding the submission to the Harris County District Clerk of a document that purports to be an application for writ of habeus corpus, a document that requires adjudication by a court. Thus, it is a case record, not a judicial record as defined by Rule 12.2(d). Petitioner alleges that the matter does not pertain to the court's adjudicative function because his application was returned to him without being filed with the court, there is no case identifier related to the matter and the judge does not have jurisdiction over the subject matter of Petitioner's suit. We disagree. Rule 12.2(d) exempts a court's adjudicative records regardless of whether they relate to a specific case. All documents submitted to the clerk of a court with the intent that they be acted upon by a court pertain to a court's adjudicative function. It is immaterial whether the form of the document is defective and is returned to the filer. Accordingly, the requested record is not covered under Rule 12¹ and we can neither grant the petition in whole or in part nor sustain the denial of access to the record.

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.