

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-018

RESPONDENT: Court of Criminal Appeals

DATE: November 27, 2017

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy, Judge Olen Underwood, Judge Sid Harle, Judge Missy Medary

The Petitioner requested access to the following documents from Respondent: 1) any record similar to the internal operating procedures posted online by the Supreme Court of Texas which describes the Respondent's process for handling habeas corpus and other cases, and 2) any record which demonstrates how habeas corpus cases in which a district judge has issued a recommendation for relief are handled by Respondent compared to all other cases. Respondent denied Petitioner's request stating that the records are not judicial records under Rule 12 because they pertain to Respondent's adjudicative function and that they are also exempt from disclosure under Rule 12.5(a) and Rule 12.5(f). Petitioner then filed this appeal.

The threshold issue in a Rule 12 appeal is whether the records are "judicial records" as 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 internal administration rules requested by Petitioner are not related to a specific case or matter before Respondent. However, under Rule 12, a record may pertain to a court's adjudicative function even if it doesn't relate to a specific case. How a court processes or decides cases is part of its adjudicative function. Therefore, procedures regarding how a court processes its cases also pertain to a court's adjudicative function. Accordingly, we agree that the records requested by Petitioner pertain to Respondent's adjudicative function and are not judicial records within the meaning of Rule 12.

Respondent argues that all court operating procedures should be made available to the public like those posted online by the Supreme Court of Texas. We do not address this point because the presiding judges of the administrative judicial regions do not have the authority to address whether a document that is not covered by Rule 12 should be made available to the public.

Because the records at issue in this appeal are not judicial records under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.