

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 17-015

RESPONDENT: Second Court of Appeals

DATE: October 2, 2017

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge Missy Medary; Judge Dean Rucker

Petitioner requested from Respondent a copy of an audio recording¹ of an oral argument heard by Respondent in a specific case and copies of documents or orders regarding decisions to not record the argument and not release the recording. Petitioner also requested copies of Respondent's rules regarding the recording of arguments and whether the recordings are available to the public. Petitioner asserts he did not receive a response and has filed this appeal.

Respondent has informed this committee that it does not have any documents, orders, or rules responsive to Petitioner's request. If a requested record does not exist, a Respondent's inability to produce the requested record is not a denial of access to judicial records under Rule 12.

In addition to appealing the denial of access to records, Petitioner appeals the fact that he did not receive a response to his request.² Rule 12 provides procedures for responding to requests when judicial records are available. *See* Rule 12.6. It is silent regarding the duty or procedure to respond when a requested record does not exist. Nevertheless, requestors sometimes interpret a lack of response as a denial of access to the requested information. For this reason, it is helpful to inform requestors that the records they are seeking do not exist; but Rule 12 does not require it.

For the reasons discussed above, the petition is denied.

¹ In Rule 12 Decision No. 17-008, we concluded that the audio recording at issue in this appeal was a case record, not a judicial record under Rule 12, and that we were without authority to grant the petition or sustain the denial of access to that record. This decision only addresses the remaining records requested by Petitioner.

² Respondent included in its response to this appeal an email sent by Respondent's clerk to Petitioner in October of 2014 explaining that Respondent did not have any rules mandating the recording of oral arguments and that they are recorded at the justices' discretion. We note, however, that the request at issue in this appeal was sent to Respondent in July of 2017.