Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 22-007

RESPONDENT: 296th District Court

DATE: July 21, 2022

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Missy Medary; Judge Dean Rucker; Judge David L. Evans; and Judge Ana Estevez

Petitioner submitted a records request to Respondent on March 17, 2022 (the "March request"). The March request was denied and subsequently became the subject of our decision in Rule 12 Appeal No. 22-003. In April, prior to the release of Decision No. 22-003, Petitioner requested from Respondent two additional sets of records:

- "all records in [Respondent's] office regarding the [March request], to include communications about that request[;]" and
- "all records concerning [Petitioner's client] and/or [Petitioner] since [Respondent] received the [March request]."

For the first set of records, Respondent answered that the request was "overbroad, constitutes the matter currently pending in [Rule 12 Appeal No. 22-003], and [did] not include Judicial records." For the second set of records, Respondent replied that the records were not judicial records and that they were confidential under Rule 12.2(f) (internal deliberations exemption). Respondent also added that "to the extent [the records were] sent to or received from an attorney for legal advice or assistance[,] such [records] are confidential attorney-client communications." Petitioner then filed a petition for review. Petitioner contested Respondent's determination that the request was overbroad, and observed that he was "unaware of any authority suggesting that records relating to a proceeding under Rule 12.9 are themselves exempt from disclosure." Respondent, in its reply to Petitioner's petition, informed the special committee that the records sought, to the extent they existed, were not judicial records because Petitioner and Petitioner's client were participants in an "underlying court case." Respondent stated that some of the responsive communications addressed Rule 12 Decision No. 22-003 and the March request, and that the communications were attorney-client privileged. Petitioner then submitted a reply to Respondent's reply, citing Rule 12.6(d) in arguing that "[i]f nothing else, the letter headings, signature lines and/or email addresses of any responsive documents would not be covered by attorney-client privilege." Petitioner requested that the special committee review the responsive records *in camera* to determine what portions should be redacted. Respondent provided the special committee the responsive records for our *in camera* review.

Rule 12 applies to "judicial records," those records "made or maintained by or for a court . . . in its regular course of business but not pertaining to its adjudicative function[.]" Rule 12.2(d). Moreover, a record "created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." Rule 12.2(d). After reviewing the records, we conclude that they do not pertain to Respondent's adjudicative function, and have not been created, produced, or filed in connection with a matter before a court. They thus fall within the definition of a "judicial record" under Rule 12 and are facially subject to it.

Nevertheless, even where a record is facially subject to Rule 12 as a judicial record the rule itself may be inapplicable to the record by Rule 12's own terms. Rule 12 does not apply to records that are subject to a rule of evidence. Rule 12.3(a)(1)(c). Thus, attorney-client communications that are privileged under Rule 503 of the Texas Rules of Evidence (TRE) are not subject to Rule 12. *See* Rule 12 Decisions No. 22-001 and No. 08-006. TRE 503(b)(1) holds that a client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client between the client or the client's representative and the client's lawyer or the lawyer's representative. TRE 503(a)(1) holds that a " 'client' is a person [or] public officer . . . that (A) is rendered professional legal services by a lawyer; or (B) consults with a lawyer with a view to obtaining professional legal services from the lawyer." Having reviewed the withheld records *in camera*, we conclude the records consist of information privileged under TRE 503.

Petitioner cites Rule 12.6(d) in urging that at least some materials in the records be released. We note that the attorney-client privilege extends to an entire communication. *See, e.g.*, *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding). Once established, the privilege extends to the entire document, not merely to the specific portions relating to legal advice or opinions. *In re Toyota Motor Corp.*, 94 S.W.3d 819 (Tex. App. San Antonio 2002, orig. proceeding) (citing *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 425 (Tex. App. Houston [14th Dist.] 1993, orig. proceeding). With the sought-after emails being subject to attorney-client privilege and extending to the entire document, then, the records *in toto* are not subject to Rule 12. Accordingly, we can neither grant the appeal from the denial of the responsive records nor sustain the denial of access to them.