

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-012

RESPONDENT: Process Server Review Board

DATE: September 28, 2010

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard, Judge Olen Underwood, Judge David Peeples, Judge Dean Rucker

Petitioner requested from the Supreme Court of Texas (the “Court”) all information related to a particular certified process server, including the complaint filed against him, the process server’s response, and any correspondence to and from the Court or the Process Server Review Board (Respondent) regarding the complaint. The Court referred the request to Respondent, the custodian of the requested records. Respondent provided Petitioner some of the information that was responsive to his request but denied access to other records claiming that they were exempt from disclosure under Rule 12.5(a), Rule 12.5(f), Rule 12.5(i) and Rule 12.5(k) of the Rules of Judicial Administration. Petitioner then filed this appeal.

In Rule 12 Decision No. 10-001, the special committee found that records related to a complaint filed with Respondent, including the investigation and resolution, are not judicial records as defined by Rule 12.2(d) of the Rules of Judicial Administration because they are records that pertain to the Respondent’s adjudicative function. Because the records at issue were not covered by Rule 12, the special committee concluded that it did not have the authority to issue a decision in the matter. Respondent urges us to reconsider this decision. In support of its request, Respondent refers us to Rule 12.5(a), the exemption for judicial work product and drafts, which specifically refers to records related to a judicial officer’s adjudicative function. It reads:

(a) Judicial Work Product and Drafts. Any record that relates to a judicial officer’s adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer. [Emphasis added]

Respondent argues:

The fact that “judicial record” is defined in the definitions portion of Rule 12, RJA (Rule 12.2 Definitions) so as to exclude records pertaining to the Board’s adjudicative function does not preclude a later provision in the exemptions from disclosure portion of the Rule (Rule 12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:) from creating an exemption for judicial work product and drafts. ... In sum, the exemptions from

disclosure provided in Rule 12.5 do not appear to be restricted to judicial records as defined by Rule 12.2(d).

But our authority to issue a decision regarding the denial of access to records is limited to the denial of access to judicial records. The provision that gives us this authority, Rule 12.9, reads:

A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration. [Emphasis added]

The records at issue in this appeal all relate to a complaint filed with the PSRB. These records are not judicial records as defined by Rule 12.2(d). *See* Rule 12 Decision No. 10-001. The special committee has authority to review the denial of access to “judicial records.” Because the records at issue in this appeal are not judicial records under Rule 12, this committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.