

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-001

RESPONDENT: State Bar of Texas

DATE: March 8, 2011

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

Petitioner requested a copy of approximately 63,000 attorney e-mail addresses from the State Bar of Texas (the State Bar or Respondent) that had been released previously to another requestor. Respondent requested an opinion from the Office of the Attorney General (OAG) regarding its authority to release the requested e-mail addresses under Chapter 552 of the Government Code (commonly referred to as the “Public Information Act”). Respondent was unsure whether it was still authorized to release the e-mail addresses that had previously been released because, subsequent to that release, many attorneys chose to restrict public access to this information under Section 552.1176, Texas Government Code (Confidentiality of Certain Information Maintained by State Bar). The OAG decision required Respondent to withhold the requested attorney e-mail addresses except for those belonging to government attorneys who did not elect to restrict public access to their e-mail addresses under Section 552.1176, Texas Government Code. Respondent provided the e-mail addresses it could release to Petitioner and withheld the rest. Petitioner has appealed Respondent’s denial of access to the e-mail addresses arguing that they are subject to Rule 12, not the Public Information Act, and that Rule 12 does not exempt them from disclosure.

We first address whether Rule 12 applies to the records at issue in this appeal. Rule 12 defines a “judicial agency” as “an office, board, commission or other similar entity that is in the Judicial Department and that serves an administrative function for a court.” Rule 12.2(b). A “judicial record” under Rule 12 is “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.” Rule 12.2(d). Section 81.011 of the Government Code provides that the State Bar is an administrative agency of the judicial department; and the State Bar maintains membership records, including attorney e-mail addresses, for the Supreme Court under Section 81.029(c) of the Government Code. Thus, the State Bar is a judicial agency and the requested e-mail addresses fall within the definition of judicial records that are subject to Rule 12. Section 81.033 of the Government Code, however, specifically makes the State Bar and its records subject to Chapter 552 of the Government Code, and Rule 12 does not apply to records to which access is controlled by Chapter 552 of the Government Code or another statute or provision of law. *See* Rule 12.3(a)(4). Further, in Comment Number 1 to Rule 12, the Supreme Court specifically mentioned the inapplicability of Rule 12 to the State Bar. Comment 1 reads in pertinent part:

Although the definition of “judicial agency” in Rule 12.2(b) is comprehensive, applicability of the rule is restricted by Rule 12.3. The rule does not apply to judicial agencies whose records are expressly made subject to disclosure by statute, rule, or law. An example is the State Bar (“an administrative agency of the judicial department”, Tex Gov’t Code §81.011(a)), which is subject to the Public Information Act. Tex. Gov’t Code §81.033. Thus, no judicial agency must comply with both the Act and this rule; at most one can apply.

It is this Committee’s opinion that this comment was added to prevent a situation such as the one presented in this appeal: a judicial agency having to determine whether the Public Information Act, Rule 12 or both apply to some or all of its records.

Petitioner cites *Abbott v. State Bar of Texas*, 241 S.W.3d 604 (Tex. App.-Austin 2007, pet. denied) in support of his position that attorney membership records are covered under Rule 12. The *Abbott* case addressed the applicability of the Public Information Act to attorney membership records, including home addresses and telephone numbers, maintained by the State Bar.¹ The *Abbott* court suggested that Rule 12 might apply and held that access to the membership information at issue was “not governed by the Public Information Act, but by ‘rules adopted by the Supreme Court of Texas or by other applicable laws and rules’ pursuant to section 552.0035.”²

We respectfully decline to follow the *Abbott* decision for the following reasons. First, *Abbott* did not consider the comment to Rule 12, quoted above, in which the Supreme Court said that the State Bar’s records are governed by the Public Information Act and not by Rule 12. Also, *Abbott* was issued prior to the effective dates of both Section 552.1176 of the Government Code, which specifically addresses the confidentiality of membership records maintained by the State Bar, and the 2008 amendments to Article III, Section 2 of the State Bar Rules regarding attorney membership information. In a note to the amended Article III, Section 2, the Supreme Court states that Section 552.1176 of the Government Code prescribes the confidentiality of certain membership information maintained by the State Bar.

Accordingly, we find that Rule 12 does not apply to the membership records of the State Bar and this committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.

¹ E-mail addresses were not at issue in the *Abbott* case and they were not included in the list of membership information that the State Bar was required to maintain under the version of Article III, Section 2 of the State Bar Rules that was in effect at the time the *Abbott* decision was issued.

² Section 552.0035(a) provides that “access to information collected, assembled or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.”