

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 08-009

RESPONDENT: Montgomery County Board of Judges

DATE: February 27, 2009

SPECIAL COMMITTEE: Judge B.B. Schraub, Chairman; Judge John Ovard, Judge David Peeples, Judge Stephen B. Ables, Judge J. Manuel Bañales

Subsequent to Petitioner's removal from the list of attorneys eligible for court appointments in juvenile felony cases and the non-renewal of Petitioner's eligibility for court appointments in felony trial cases in Montgomery County, Petitioner requested from the Montgomery County Board of Judges (the "Board" or "Respondent") in a letter dated November 25, 2008, any records regarding the Board's action. Petitioner contends that the Board did not respond to the request and has filed this appeal. Respondent contends that though no record of Petitioner's letter exists, one of the judges recalls receiving a letter from Petitioner. Respondent also contends that it did not respond to the request because all responsive documents, except for two documents provided to this special committee for *in camera* review, were provided to Petitioner when Petitioner was originally notified of the Board's action. Respondent claims that the records submitted for *in camera* review are exempt from disclosure under Rule 12.5(f) and 12.5(e) of the Rules of Judicial Administration.

We first address Respondent's failure to respond to Petitioner's request for records. Rule 12.8 of the Rules of Judicial Administration provides the procedure for denying access to judicial records. A records custodian who denies access to judicial records must notify the person requesting the record of the denial within a reasonable time, not to exceed 14 days, after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6(b)(2). Rule 12.8(b). The denial must be in writing, state the reason for the denial and provide information regarding the right to appeal. Rule 12.8(c). Respondent recalls receiving a letter from Petitioner and has identified documents that are responsive to the Petitioner's request but that Respondent believes are exempt from disclosure. Respondent should have complied with Rule 12.8 and provided a written response to Petitioner stating that it was denying the request for access to certain records and informing the Petitioner of the right to appeal.

We next address Respondent's contention that the two records submitted for *in camera* review are exempt from disclosure under Rule 12.5(f). This rule exempts "any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency, on matters of court or judicial administration." One of the submitted documents

pertains to applicants for criminal court appointment eligibility in Montgomery County and was created by one or more judicial officers or members of a judicial agency during the process of deliberating the attorneys' qualifications. The process of reviewing applicants for eligibility on the court appointment list is a judicial administration matter. Therefore, we agree that this document is exempt from disclosure under Rule 12.5(f) and may be withheld by Respondent.

The second document is an order that is signed by a majority of the district and statutory county court judges of Montgomery County and orders that Petitioner be placed on certain public appointment lists for Montgomery County. Orders are final decisions in a matter. Though the records created in the process of making a decision may constitute the internal deliberations of an entity, the final decision is not deliberative. Therefore, the order is not exempt from disclosure under Rule 12.5(f).

We next consider whether the other exception raised by Respondent applies to the order. Rule 12.5(e) exempts from disclosure "records relating to an applicant for employment or volunteer services." Applicants seeking to be named on a list of lawyers who are eligible for court appointments are not applying for employment nor are they volunteering to serve. Accordingly, we find that Rule 12.5(e) does not apply and we grant Petitioner access to this record.