

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 99-001

**RESPONDENT:** Unauthorized Practice of Law Committee

**DATE:** August 31, 1999

**SPECIAL COMMITTEE:** Judge Pat McDowell, Judge B. B. Schraub, Judge David Peoples, Judge Darrell Hester, Judge Ray D. Anderson

The applicant J. W. Payne is an attorney who represents two attorneys and a company who are the subject of an investigation by the Dallas Subcommittee of the Unauthorized Practice of Law Committee (hereinafter, both the subcommittee and the committee are referred to as “the Committee”). The applicant’s clients each received a letter from an investigator for the Committee informing them that it “has received information that (they) have engaged in certain activities which may constitute the unauthorized practice of law.” Mr. Payne responded to the investigator’s letters by requesting, pursuant to Rule 12, an inspection and copying of his clients’ UPL files. He was provided with some information, such as copies of Committee rules and a form letter which he had already received. After another request, he was provided some further information, such as copies of correspondence with potential investigators for the Committee.

On June 25, 1999, the applicant filed this Rule 12 appeal stating that he had been denied access to the judicial records of the Committee. On July 9, counsel for the Committee sent the applicant copies of the UPL files related to his clients and portions of Committee meeting minutes related to his clients. Portions of the documents were redacted, and the investigator’s notes were withheld in their entirety. The documents which contained redactions were (1) an April 15, 1999 report from the Committee’s investigator to its chairman; (2) a June 1, 1999 letter from the Committee’s investigator to its chairman; and (3) portions of Committee meeting minutes from December 1998 to June 1999. This appeal presents three issues.

### **1. Are the documents in question “judicial records?”**

The threshold issue in a Rule 12 appeal is whether the records are “judicial records,” which are defined by Rule 12.2(d) as follows:

*“Judicial record means 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, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.”*

These records are judicial records, because the Committee has no adjudicative power. *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 772, 783 (Tex. 1999).

## **2. Are the documents in question exempt from disclosure?**

Rule 12.5(k) exempts from disclosure the following:

***“Investigations of character or conduct.*** Any record relating to an investigation of any person’s character or conduct, unless:

- (1) the record is requested by the person being investigated; and
- (2) release of the record, in the judgment of the records custodian, would not impair the investigation.”

We have compared the redacted documents to the unredacted documents submitted to this committee for *in camera* review. The redacted information is related to Committee investigations of persons other than this applicant’s clients, and is exempt from disclosure under Rule 12.5(k).

Although the personal notes of the investigator were not provided to this committee, we conclude that they are exempt from disclosure as privileged work product. Rule 12.5(i) exempts from disclosure information that is confidential or exempt from disclosure under other law. As the Supreme Court noted, the UPL Committee is empowered to seek adjudication of whether activities constitute the unauthorized practice of law. *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 772 (Tex. 1999). Thus, the investigator’s notes are material prepared or mental impressions developed in anticipation of litigation within the meaning of Rule 192.5 of the Texas Rules of Civil Procedure, and are therefore exempt from disclosure under Rule 12.5(i).

## **3. Are the documents in this Rule 12 appeal, including the names of the parties being investigated, confidential?**

The applicant requested that all of the documents in this appeal, including the identity of the parties being investigated, be kept confidential, to prevent harm to the reputation of these active members of the bar. The confidentiality of these documents should be maintained by this committee and by the Office of Court Administration, for the following reasons.

Although the documents are judicial records insofar as the UPL Committee is concerned, they are not judicial records insofar as this special Rule 12 committee is concerned, because they relate to its adjudicative function. Under Rule 12.9(k)(2), the Administrative director of OCA must maintain a copy of the special committee’s decision in his office for public inspection. Under Rule 12.9(l), the Administrative Director of OCA must publish periodically to the judiciary and the general public the special committee’s decisions. Thus, Rule 12 specifically provides for publication of this committee’s decisions, but does not provide that the documents in the appeal itself are open to the public.

For the reasons stated, this review committee concludes that the applicant has been provided copies of all of the documents to which he was entitled. Access to the withheld and redacted information is denied.