

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 99- 9082

**IN RE PETITION OF NOLO PRESS, INC.
TO AMEND RULES GOVERNING
THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

PER CURIAM

In Cause No. 98-0724, styled *In re Nolo Press/Folk Law, Inc.*, relator Nolo Press, Inc., a publisher of self-help legal books and computer software, has petitioned for a writ of mandamus compelling the Unauthorized Practice of Law Committee of the State Bar of Texas to produce certain documents and information, and alternatively, for clarification or modification of this Court's September 16, 1986 Order¹ that limits disclosure of Committee records. In today's opinion in that case we deny mandamus relief and, for reasons there explained, conclude that Nolo Press's alternative request for clarification or modification of the 1986 Order should be treated as an administrative matter.² We here address that matter.

The 1986 Order makes all the UPL Committee's records confidential. Before considering modifications to this Order our usual procedure would be to call for comments from the Committee and all interested persons. That procedure has already been served last year, however, by the Judicial Council's lengthy study and several public hearings regarding disclosure of certain records and

¹ Supplemental Order to the November 17, 1980 Order Adopting Rules for the Unauthorized Practice of Law Committee (Tex. Sept. 16, 1986) (hereinafter "1986 Order") (*infra*, Appendix I).

² *In re Nolo Press/Folk Law, Inc.*, ___ S.W.2d ___ (Tex. 1999).

information possessed by courts and agencies in the Judicial Department. Although the study did not focus on the UPL Committee, all persons interested in the confidentiality and disclosure of records of all judicial agencies were invited to comment. The Court received no comments specifically related to the UPL Committee. Based on the Council's recommendations and public comments, the Court promulgated proposed Rule 12 of the Rules of Judicial Administration, subject to comments received prior to its effective date of April 1, 1999.³ After receiving additional comments and making other changes, the Court has promulgated Rule 12.⁴

The UPL Committee is a "judicial agency" as defined by Rule 12.2(b), but because this Court's 1986 Order makes all the Committee's records confidential, Rule 12 does not apply to the Committee.⁵ Rule 12 is designed to protect a judicial agency's records from public disclosure when its function would be compromised, and otherwise to make records available to the public on request. We see no reason why this rule should not apply to the UPL Committee as it would to any other judicial agency; indeed, one goal of Rule 12 is a uniform treatment for judicial records throughout the judicial department. Since the UPL Committee has no adjudicative power, all its records would be judicial records as defined by Rule 12.2(d).

Nolo Press has requested four categories of information and records: (1) the names of the UPL Committee's subcommittee members; (2) the dates, times, locations, agendas, and minutes of past and future meetings; (3) copies of the Committee's internal rules and procedures; and (4) all internal documents related to the Subcommittee's investigation of Nolo Press. We cannot, of course, decide how Rule 12 would apply to specific records of the UPL Committee. We have not reviewed the Committee's records, nor is it for this Court to make such determinations in the first instance. Rule 12 provides a procedure for applying and enforcing its provisions. Rather, our concern is whether there is something about the UPL Committee's operations or records in general that should require treatment different from that afforded other judicial agencies whose functions must also be conducted with a degree of confidentiality. Neither Nolo Press's request, nor any factor considered by the Judicial Council of which we are aware, suggests that the UPL Committee must be treated uniquely.

³ Order Approving Revisions to the Texas Rules of Judicial Administration, Misc. Docket No. 98-9170 (Tex., Oct. 8, 1998), *reprinted in* 61 TEX. BAR J. 994 (Nov. 1998).

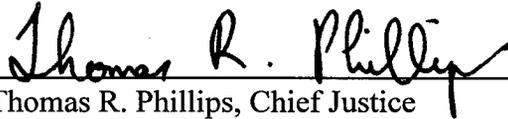
⁴ Order of Final Approval of Rule 12 of the Texas Rules of Judicial Administration and of Canon 3(C)(5) of the Code of Judicial Conduct, Misc. Docket No. 99-9058 (Tex., Mar. 24, 1999), *reprinted in* 62 TEX. BAR J. ____ (May 1999).

⁵ TEX. R. JUD. ADMIN. 12.3(a).

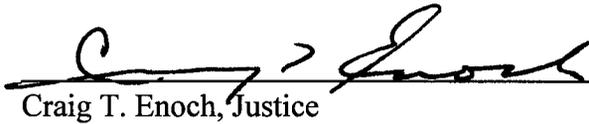
Accordingly, we conclude that our 1986 Order should not insulate the UPL Committee's records from disclosure under Rule 12. Vacating that Order will place the UPL Committee under Rule 12.

IT IS THEREFORE ORDERED that the Court's September 16, 1986 Order relating to the Unauthorized Practice of Law Committee is vacated.

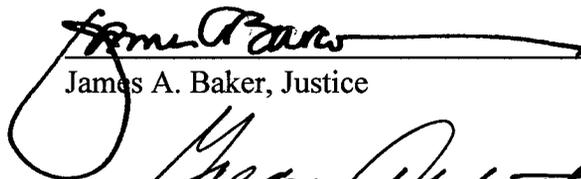
SIGNED AND ENTERED this 15th day of April, 1999.

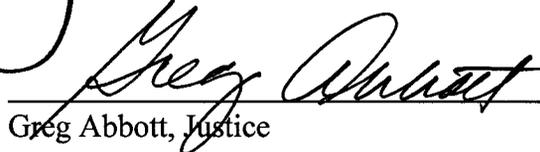

Thomas R. Phillips, Chief Justice

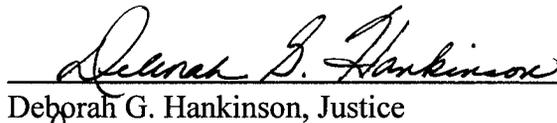

Nathan L. Hecht, Justice

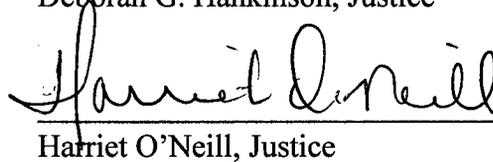

Craig T. Enoch, Justice

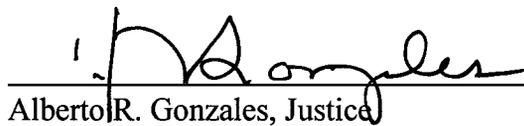

Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Alberto R. Gonzales, Justice

APPENDIX I

**IN THE SUPREME COURT OF THE
STATE OF TEXAS**

**Supplemental Order to the November 17, 1980 Order
Adopting Rules for the Unauthorized Practice of Law Committee**

WHEREAS, the Unauthorized Practice of Law Committee is appointed by the Supreme Court of Texas; and,

WHEREAS, the Committee currently operates pursuant to rules considered and approved and ordered adopted by the Supreme Court, in banc, in chambers of November 17, 1980; and

WHEREAS, The Committee in its work discharges its obligations on behalf of the Supreme Court;

IT IS, THEREFORE, ORDERED that the rule adopted as "Exhibit A" and attached hereto and incorporated by reference by adopted by the Court, in banc, in chambers, this 16th day of September, 1986.

s/ John L. Hill, Chief Justice
Sears McGee, Justice
Robert M. Campbell, Justice
Franklin S. Spears, Justice
C. L. Ray, Justice
James P. Wallace, Justice
Ted Z. Robertson, Justice
William W. Kilgarlin, Justice

9082

EXHIBIT "A"

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Rules No. _____

Section 12.

Said Committee shall keep all records, documents and other information of the Unauthorized Practice of Law Committee and its subcommittees (hereinafter referred to collectively as the "Committee") that are in its possession for the purposes of discharging its obligations in behalf of the Supreme Court confidential and shall release same only:

- (1) For the Committee's use in enforcement proceedings to eliminate the unauthorized practice of law;
- (2) To satisfy all other requirements of the Committee pursuant to Tex. Rev. Civ. Stat. Ann. Art. 320a-1, §19;
- (3) In response to proper requests of or to assist law enforcement agencies and prosecutors in the detection, investigation and prosecution of crimes; and
- (4) In furtherance of any other orders from the Texas Supreme Court.