

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 08-006

RESPONDENT: Suzanne Brooks, Judge, Williamson County Court at Law No. 1
Tim Wright, Judge, Williamson County Court at Law No. 2
Don Higginbotham, Judge, Williamson County Court at Law No. 3
John McMaster, Judge, Williamson County Court at Law No. 4

DATE: February 2, 2009

SPECIAL COMMITTEE: Judge Dean Rucker, Chairman; Judge John Ovard; Judge Olen Underwood; Judge David Peeples; Judge Jeff Walker

Petitioner requested “any and all letters, memorandums, correspondence, emails, letters and notes to and from the Williamson County Attorney and the Williamson County Courts at Law responding to, concerning, related to, and/or discussing the May 1, 2008 letter regarding Stephen Ackley addressed to Hon. Dan A Gattis, County Judge, and signed by County Court at Law Judges Don Higginbottam (sic), Tim Wright, Suzanne Brooks, and John McMaster.” Judge Higginbotham states that he does not have any documents responsive to the request. Judges Wright, Brooks, and McMaster have identified three documents that are responsive to the request but have withheld them claiming that they are privileged attorney-client communications under Texas Rule of Evidence 503 and are also exempt from disclosure under the provisions of Rules 12.3(a)(4), 12.5(i), 12.5(j), and 12.5(k) of the Rules of Judicial Administration. The documents were provided to us *in camera* and are judicial records as defined by Rule 12.2(d).

We first address the question of whether the submitted documents are privileged attorney-client communications under Texas Rule of Evidence 503. The attorney-client privilege protects confidential communications between or among clients, client representatives, lawyers, and lawyer representatives that are made to further the rendition of professional legal services. Tex. R. Evid. 503(b)(1). Although the documents submitted are communications from the county attorney to the judges, only two of the documents appear to be related to litigation or made for the purpose of facilitating the rendition of professional legal services. We find that these two documents are attorney-client communications and are privileged under Texas Rule of Evidence 503(b)(1). Rule 12.3(a)(1)(c) provides that Rule 12 does not apply to records that are subject to a rule of evidence. Therefore, we can neither grant the appeal from the denial of these two records nor sustain the denial of access to them and we need not address whether the other exceptions raised by Respondents apply.

The third document provided by Respondents is a letter from the county attorney to Judges Wright, Brooks and McMaster regarding the letter that was submitted by the judges to County Judge Dan

Gattis on May 1, 2008. It does not discuss or reference ongoing litigation or attempt to render professional legal services. Therefore, we find that it is not privileged under Texas Rule of Evidence 503. We must next consider whether the other Rule 12 exemptions raised by Respondents apply.

Respondents contend that they may withhold the document under Rules 12.3(a)(4) and 12.3(b). These are not exceptions to disclosure; rather they are provisions that make Rule 12 inapplicable to certain records and place them outside the jurisdiction of this panel. We first address Rule 12.3(a)(4) which makes Rule 12 inapplicable to records to which access is controlled by Chapter 552 of the Government Code, also known as the Public Information Act (PIA), or another statute or provision of law. Respondents contend that the responsive records are exempt from production under Section 552.103 of the Government Code, the litigation exception of the PIA, and are therefore controlled by Chapter 552 of the Government Code and that if Chapter 552 of the Government Code controls them they do not have to be released pursuant to Rule 12.3(a)(4). However, Chapter 552 of the Government Code specifically excepts the judiciary from the PIA, and therefore makes Section 552.103 inapplicable to these records. *See* Sec. 552.103(1)(B), Texas Government Code. Therefore, Rule 12.3(a)(4) does not apply to these records either.

Section 12.3(b) makes Rule 12 inapplicable to records or information to which Chapter 552 of the Government Code is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B). The records at issue are maintained by the courts and are judicial records. As records of the judiciary they are excepted from Chapter 552 by Section 552.003(1)(B) and, therefore, Rule 12.3(b) does not apply to these records.

Respondents also contend that the records may be withheld under Rule 12.5(i) because their release would constitute an invasion of the privacy of the judges, court personnel and former employees. Rule 12.5(i) exempts from disclosure any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law. We have reviewed the record to determine if its release would constitute an unwarranted governmental interference or intrusion into those areas deemed to be within the zones of privacy or constitute the tort of invasion of privacy and have found that it would not.

Respondents next contend that the document is exempt under Rule 12.5(j), the litigation exception. As discussed above, this document does not discuss nor is it related to pending or anticipated litigation. Therefore, this exception does not apply.

Lastly, Respondents contend that the document relates to an investigation of any person's character or conduct and is exempt from disclosure under Rule 12.5(k). Though the document is not solely related to an investigation of a person's character or conduct, some of the information contained in the letter refers to a complaint about and the probable investigation of a person's conduct. Therefore, we find that this information is exempt from disclosure under Rule 12.5(k) and should be redacted prior to release.

In summary, we can neither deny nor grant the petition for access to the two documents that have been identified as attorney-client privileged by this panel because they are not subject to Rule 12 and we grant the petition for access to the third document except for the information determined to be related to the investigation of a person's conduct.