

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 99-002

RESPONDENT: Unauthorized Practice of Law Committee

DATE: January 14, 2000

SPECIAL COMMITTEE: Judge Pat McDowell, Judge B. B. Schraub, Judge Darrell Hester, Judge Dean Rucker, Judge Ray D. Anderson

The applicants are an insurance company and its staff attorneys 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 applicants had received a letter in May of 1999 from an investigator for the Committee informing them that it had received information that they had engaged in certain activities which may constitute the unauthorized practice of law.

On June 2, 1999, the insurance company applicant filed a plea in intervention and counterclaim for declaratory judgment in a lawsuit pending in district court in Dallas County in which the Committee was the plaintiff and another insurance company and other attorneys were the defendants. The applicants’ attorney then responded to the letter of inquiry by letter dated June 11, 1999, in which he stated the following:

“[The] Insurance Company has recently intervened in that lawsuit which makes any specific responses to your inquiry letter inappropriate at this time. The information you seek will be better addressed in the normal course of discovery in that lawsuit.”

The attorney’s letter also contained “formal requests” on behalf of each of his clients “to inspect or copy the judicial records of the UPLC that relate to your allegations against them.”

On August 23 and again on October 12, the attorney made a formal request pursuant to Rule 12 of the Rules of Judicial Administration for documents describing allegations against the applicants regarding the unauthorized practice of law, and for copies of all investigatory procedures for prosecuting allegations of unauthorized practice of law. On October 21, in the litigation in which the insurance company applicant had intervened, the insurance company propounded interrogatories and requests for production of documents that requested the same information as was requested in the Rule 12 request. On November 3, the Committee’s records custodian responded to the Rule 12 request by sending copies of all documents requested except written communications between Committee members and/or the personal notes of the investigator, and two sections of the Committee handbook. The stated reasons for the exemptions from disclosure were attorney/client privilege and work product.

On December 3, 1999, the applicants filed this Rule 12 appeal. The Committee’s response notes the pending litigation between the parties to this appeal, and claims that the requested judicial records are

exempt from disclosure under Rule 12.5(j) as “relating to civil . . . litigation . . . in which a . . . judicial agency is . . . a party.”

The Committee is considered a judicial agency. It was a party to the litigation that was already pending at the time the request for judicial records was made. In the June 11 letter, the attorney for the applicants refers to the litigation as the basis for withholding information requested by the Committee, but then asks the Committee to disclose information despite the litigation.

The only question remaining is whether the withheld documents “relate to” the pending litigation between the parties. The request for documents pursuant to Rule 12 is identical to the request for documents pursuant to the litigation, and the requesting party is the same insurance company in both the Rule 12 matter and in the litigation. The judicial records requested pursuant to Rule 12 clearly relate to the pending civil litigation, and are exempt from disclosure under Rule 12(j)(1).

For the reasons stated, this review committee concludes that the applicants have been provided copies of all of the documents to which they were entitled. Access to the withheld and redacted information is denied.