

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-001

RESPONDENT: Process Server Review Board

DATE: March 22, 2010

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

The Petitioner requested from the Process Server Review Board (the “Board”) a copy of all documentation used by the Board to reach its decision regarding a complaint previously filed by Petitioner. The Board denied Petitioner’s request stating that the responsive documents were exempt from disclosure under Rule 12.5(k) of the Rules of Judicial Administration, and Petitioner appealed.

Petitioner claims that the requested records pertain to the Board’s adjudicative function and are not judicial records subject to Rule 12. The Board responds that it is a judicial agency as defined by Rule 12.2(b) that serves an administrative function for the Supreme Court of Texas (the “Court”). Because it serves an administrative function, the Board maintains that its records are administrative rather than adjudicative and are subject to Rule 12.

We must first decide if Rule 12 applies to the records that are the subject of this appeal. Rule 12 governs requests to inspect or copy “judicial records” of a “judicial agency.” The Board is a “judicial agency” within the definition of Rule 12.2(b). *See* Rule 12 Decision 07-003. But, not all records maintained or created by a judicial agency are “judicial records” under Rule 12. Rule 12.2(d) provides:

“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.” Emphasis added.

Thus, the pivotal issue in this appeal is whether the Board exercises an adjudicative function when it investigates and resolves complaints regarding its licensees. Black’s Law Dictionary defines “adjudication” as:

“1. The legal process of resolving a dispute; the process of judicially deciding a case. 2. JUDGMENT.”

BLACK’S LAW DICTIONARY 47 (9th ed. 2009).

The Board was created by the Court to provide the administrative function of certifying and revoking certifications of persons authorized to serve process under Rules 103 and 536(a) of the Rules of Civil Procedure. However, at times the Board is required to review facts, apply the law to the facts and make a decision or determination regarding the matter. Investigating and resolving complaints from the public is one of these activities. We agree that the Board exercises an adjudicative function when it investigates and resolves complaints from the public. Thus, the Board's records related to a complaint, including the investigation and resolution, are not judicial records covered by Rule 12.

Because the records at issue in this appeal are not judicial records under Rule 12, this review committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.