

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 00-005

RESPONDENT: Judge W. Reed Leverton

DATE: October 23, 2000

SPECIAL COMMITTEE: Judge John Ovard, Judge B. B. Schraub, Judge David Peeples, Judge Darrell Hester, Judge Kelly Moore

The applicant is a public relations firm which requested documents from Judge W. Reed Leverton of the 383rd District Court relating to a former associate judge, Donald L. Williams.

The associate judge retention committee of the El Paso Council of Judges was charged by the council with making a recommendation on whether Mr. Williams should be retained in his position as an associate judge. The committee requested and received comments from the family law community on that issue, and apparently promised that the comments would be confidential. During the course of the retention review, a group of judges who were aware of the content of the comments reported allegations of misconduct by the associate judge to the State Commission on Judicial Conduct. The commission publicly stated that his “inappropriate comments about women constitute conduct that is unbecoming of a judge and reflect an insensitive attitude about women that should not be tolerated from any member of the judiciary.” The associate judge was later terminated by the Council of Judges as a result of the alleged misconduct.

The applicant requested correspondence and comments received by the committee as a result of the public solicitation of comments. Judge Leverton declined to submit the documents to the applicant, but did submit them to this committee for *in camera* review. The withheld documents consist of 16 letters from members of the bar (the “comment letters”). Some of those letters contain favorable comments. Others are unfavorable; some of those reveal details of highly embarrassing incidents involving the associate judge’s behavior towards female attorneys and female litigants; some involve allegations of financial conflicts of interest, and some involve allegations of inappropriate judicial conduct. The other withheld document that is responsive to the request is a letter to Judge Leverton from an attorney member of the retention committee; it reports on the actions of the committee regarding the retention issue (the “report”). The report is labeled “PRIVILEGED AND CONFIDENTIAL COMMUNICATION.”

All of the documents are “judicial records” within the definition of Rule 12.2(d). Judge Leverton claimed the comment letters were exempt from disclosure under Rule 12.5(c), (e), (i), and (k). We have been given no information that the comment letters are part of the personnel records of Mr. Williams, or that they are records relating to an application for employment. Similarly, it is not clear whether the author of the committee report wrote it as legal counsel to the Council of Judges or as a member of the retention

committee, or both. Accordingly, we will not at this time consider the exemptions under Rule 12.5(c), or (e), or any allegations of attorney client privilege.

Rule 12.5(k) provide in pertinent part the following exemption:

“(k) *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.”

These records have not been requested by the associate judge. Thus, they are exempt if they constitute “*any* record relating to an investigation of any person’s character or conduct.” (Emphasis added). The comment letters and the report all related to an investigation of the associate judge’s character or conduct, and thus fall within the Rule 12.5(k) exemption.

Rule 12.5(k)’s exemption promotes the public interest in insuring that investigations of any person’s character or conduct remain confidential, in order to insure that witnesses do come forward to testify without fear of disclosure of identifying facts and of retribution. Because of the assurance of confidentiality, these witnesses were willing disclose very specific and very embarrassing incidents concerning a judge who had power to retaliate against them and their clients. Public policy has been served by promotion of the full disclosure of improper conduct and the prompt resolution of valid complaints.

Judge Leverton also cited Rule 12.5(i)’s exemption, which provides in pertinent part as follows:

“(i) *Information Confidential Under Other Law.* Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, . . .”

The comment letters would be confidential under this exemption as well. They contain highly intimate or embarrassing facts related by witnesses who were victims of the described conduct, and the publication of those facts would be highly objectionable to a reasonable person. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519 (Tex. Ct. App.–El Paso 1992, writ denied), and *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 680 (Tex.1976), for cases discussing a similar exemption under the Public Information Act.

We sustain the denial of access to the comment letters and the committee report under the exemptions in Rule 12.5(i) and (k).