DOCKET NO. CV 16 5018092 : SUPERIOR COURT

MARK SARGENT

v. : JUDICIAL DISTRICT OF NEW BRITAIN

FREEDOM OF INFORMATION
COMMISSION : DECEMBER 13, 2017

MEMORANDUM OF DECISION

This is an appeal by Mark Sargent from rulings by the freedom of information commission (commission) dismissing his complaints regarding the judicial branch's (branch) refusal to provide him with copies of (1) documents pertaining to branch policies to protect families from sexual abuse by family court appointees, as well as notices, agendas and minutes of meetings of the branch's family re-engineering committee (committee) and guardian ad litem (GAL) subcommittee (subcommittee); commission docket # 2016-0077; and (2) documents submitted to the subcommittee in response to its request for public comments on its draft report, as well as documents specifying to whom such comments were distributed. Commission docket # 2016-0079.[1]

[1] Mr. Sargent also attempted to appeal from a commission ruling, in a case brought by another member of the public, that meetings of the subcommittee were not subject to the "open meetings" provision of the freedom of information act (act).

Sent to: 1) Mark Sargent 2) FOIC- Kathleen Ross
3) Martin Libbin/Adam Mauriello 4) Official Court Rptr
by A. Jordanopoulos, C.O. on 12-13-17.

#133 End

The commission found that past meeting notices, agendas and minutes requested by Mr. Sargent did not pertain to an administrative function of the branch; therefore, pursuant to General Statutes §§ 1-200(1)(A)[2] and 1-200(5)[3], they were not "public records" to which the act granted him access. See Docket entry # 114, pp. 347-48. Likewise, the commission found that comments received by the branch on the subcommittee's draft report and documents specifying to whom such submissions have been, will be or may be distributed did not pertain to an administrative function of the branch and, therefore, were not "public records." See Docket entry # 116, p. 333. With regard to his request for documents dealing with branch policies aimed at protecting families from sexual abuse by family court appointees, a represen-

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General Statutes § 1-225(a). This court found that issue to be moot inasmuch the subcommittee had ceased to function. See docket entry # 123, herein, pp. 15-16.

[2] "Public agency . . . includes any judicial office, official, or body or committee thereof but only with respect to it or their administrative functions . . . ."

[3] "'Public records or files' means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method."

tative of the branch testified before the hearing officer that it had no documents responsive to that request. In the absence of such documents, the commission concluded that the branch did not violate the act with respect to that request. See Docket entry # 114, p. 348.

I

This court has previously ruled that Mr. Sargent's requests for notices and agendas of meetings of the committee and subcommittee were moot inasmuch as both had ceased to function. See docket entry # 123, pp. 15-16. At the same time, this court held that Mr. Sargent's requests for minutes of the meetings of both bodies, responses to the subcommittee's request for public comments on its draft report and documents showing to whom those public comments had been distributed were not moot. Id., pp. 16-17. Therefore, the parties were ordered to brief the issue whether any of those documents constituted "public records," i.e., whether they pertained to the "administrative functions" of the branch.

The parties filed briefs on September 22, 2017, and the court heard argument on October 31, 2017. In his brief and at argument Mr. Sargent narrowed the issue before the court to whether the commission erred in ruling that submissions to the branch in

response to the request for comments on the subcommittee's draft report and any distribution list related to such submissions were not public records. See Plaintiff's Brief on the Merits (plaintiff's brief), docket entry # 130, p. 3.

There are no facts in dispute. The question is whether, as a matter of law, the records sought by Mr. Sargent are "public records" to which he is entitled under the act.

II

The subcommittee was appointed by the chief justice "to study and recommend the minimum qualifications necessary to be eligible for appointment as a guardian ad litem and attorney for the minor child in family matters, as well as a process by which guardians ad litem and attorneys for the minor child may be removed from the list of those deemed eligible for appointment in family matters." Report of the Guardian ad Litem Subcommittee, docket entry # 116, p. 247. The subcommittee completed a draft report in early January 2016, posted it on the branch website and solicited comments on its contents from the public. Id. Its final report to the chief justice was issued on January 22, 2016 and covered such topics as minimum qualifications to be eligible for service as a GAL or attorney for a minor child, pre-service training and continuing

education for those serving in either capacity, annual review of the continuing eligibility of those serving in either capacity and creation of a standing committee on GAL's and attorneys for minor children that would, among other things, establish a process for removing an individual from the list of those eligible to serve as either a GAL or attorney for a minor child. Id., p. 246. The subcommittee recommended three changes in the Practice Book, both by amendment of existing rules and creation of a new rule. Id., 266-71.

In its final report the subcommittee stated that "many of the recommendations/comments [from the public] that were within the purview of the subcommittee were incorporated into this report" and thanked those who had responded to its request for comments. Id., 247. It is these comments that Mr. Sargent seeks, as well as a listing of all persons to whom they were distributed. Whether or not he is entitled to them under the act depends on whether they pertain to the "administrative functions" of the branch, as that term has been interpreted by the Supreme Court in *Clerk of the Superior Court* v. *Freedom of Information Comm.*, 278 Conn. 28 (2006)(*Clerk of the Superior Court*).

III

In *Clerk of the Superior Court* an attorney requested from the clerk of a geographical area court the "pending book" and "day book" of that court for January 2002, ledgers identifying cases pending before the court and any other records that would identify cases pending in "pre-arraigment status." Id., 31-32. That request was denied by the branch on the ground that the requested records did not pertain to its administrative functions. Id., 32. On the same ground the branch denied a later request from the same attorney for day books for a different period in 2002 and information maintained in the court's computer system that would identify defendants charged with a criminal offense between January 15 and February 6, 2002, the docket numbers of their cases, the charges against them, whether they were represented by counsel, the dates and purpose of their next scheduled hearing and whether or not they were incarcerated. Id., 34.

The attorney appealed to the commission the branch's refusal to disclose any of the requested records. The commission ruled that, although the "pending book" and "day book" were not disclosable, the information in the branch's computer system was subject to the act because the records in that system served both administrative and adjudicative functions. Id. Information in the

computer system pertaining to administrative functions of the branch has to be disclosed under the act, the commission ruled, and the branch would have to develop "new administrative procedures" to guarantee public access to such information without interfering with judicial functions. Id. The trial court sustained the branch's appeal, and an appeal to the Supreme Court followed.

The Court had made two previous forays into the thicket of issues raised by application of the act to the branch. *Rules Comm. of the Superior Court* v. *Freedom of Information Comm. (Rules Committee)*, 192 Conn. 234 (1984); *Conn. Bar Examining Comm.* v. *Freedom of Information Comm. (Conn. Bar Examining Comm.)*, 209 Conn. 204 (1988). It is clear that the Court's opinion in *Clerk of the Superior Court* was meant to turn a new page in its jurisprudence of access to branch records under the act. It rejected as "internally inconsistent" the *Rules Committee* Court's decision; *Clerk of the Superior Court*, supra, 278 Conn. 44; and found that its formulation of a test for determining which branch records pertained to its "administrative functions"; i.e., those records that pertained to the "internal institutional machinery" of the branch, was "as devoid of generally accepted plain meaning as the phrase 'administrative functions'," itself, and failed to

provide "any real guidance as to whether a function is administrative." (Internal quotation marks omitted.) Id., 45.

The Court in *Clerk of the Superior Court* also rejected the suggestion in *Conn. Bar Examining Comm.* that the act applies to activities that are a combination of administrative and adjudicative functions as relying entirely on dicta in *Rules Committee of the Superior Court* in support of that proposition and "subject to criticism for the same reasons." Id., 51. Because the commission had relied on the decisions in these earlier cases to support its position that the branch's computer records were accessible to the public under the act, the Court in *Clerk of the Superior Court* rejected that conclusion.

Instead, the Court there developed its own definition of what are the administrative functions of the Branch: "We conclude that the judicial branch's administrative functions, as that phrase is used in [General Statutes] § 1-200(1)(A), consist of activities relating to its budget, personnel, facilities and physical operations." Id., 36. Because the information in the branch's computer system did not relate to those activities, the Supreme Court held that the trial court had been correct in deciding that

they did not constitute "public records" and were not subject to disclosure under the act. Id.

While the Court in *Clerk of the Superior Court* dismissed the reasoning and conclusions of the Court in *Rules Committee*, it did adhere to that court's findings as to the legislature's intentions in applying the act to the courts: First, that "the legislature intended for the scope of the act as applied to the courts to be much more limited than its scope as applied to other state agencies"; second, that the legislature intended for the act's application to be limited to "records prepared by a subdivision of the judicial branch *only* in the course of carrying out an administrative function"; third, that it also intended for the phrase 'administrative functions' "to be construed narrowly." (Emphasis original.)Id., 39.[4]

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[4] These findings were based on a supposed legislative intent to avoid "a grave constitutional problem in legislative rule-making for constitutional courts." *Rules Comm. of the Superior Court*, supra, at 241. When the legislature made the act applicable to constitutional courts in 1977, the Court in *Rules Committee* found, "there . . . is certainly no evidence that it was intended to stimulate a confrontation with the Judicial Department by extending the act's open meeting provision to a significant portion of the judiciary's business. The legislative history, then, supports a restrictive reading of the term 'administrative'." Id., at 242.

This court, in deciding whether Mr. Sargent has a right of access under the act to the records he seeks, must have those principles in mind.[5]

IV

The functions of GAL's and attorneys for minor children were addressed in *In re Tayquon H.*, 76 Conn. App. 693 (2003). The GAL is to "speak on behalf of the best interests of the child"; Id., 703; the attorney's role is "to advocate for the child in accordance with the Rules of Professional Conduct"; Id., 702; and to protect his legal rights, which "often may be distinct from the child's best interest." Id., 706. One or both will be appointed by the court before which a particular matter is pending when the court perceives that their presence is necessary to help the court reach a proper resolution of the case. Thus, it is clear that persons appointed to fill these roles are intimately involved in the adjudicative function of the court.

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[5] The parties have not cited and the court's research has not unearthed any Connecticut judicial decisions, at either the trial or appellate level, since the Supreme Court's decision in *Clerk of the Superior Court* that apply that Court's test in determining whether certain records of the branch are available to the public under the act.

That these court appointees must be carefully selected, properly trained and their performance closely monitored if they are effectively to assist the court and address the interests of minor children before the court is also obvious. These were the subjects that the subcommittee studied and on which it drafted recommendations. The close relationship between the subcommittee's work and the effective performance of the courts' adjudicative function in cases where GAL's and/or attorneys are appointed for minor children demonstrates that the subcommittee's activities served the branch's adjudicative not its administrative functions. This point is driven home by the inclusion of the subcommittee's recommendations in the Practice Book, which establishes the procedures by which cases are adjudicated in Connecticut courts. See Practice Book §§ 25-61A, 25-62 and 25-62A.

The subcommittee's activities included soliciting comments from members of the public with an interest in the work of GAL's and attorneys for minor children and distributing those comments to members of the subcommittee and other appropriate persons within or, perhaps, without the branch so that the comments could be evaluated for inclusion in the subcommittee's final report. This aspect of the subcommittee's work, contributing as it did to

the final recommendations of the subcommittee, also pertains to the adjudicative not the administrative functions of the branch. For these reasons the records of those comments and the list of those to whom they were distributed are not "public records." Mr. Sargent has no right under the act to copies of those documents.

Even if the activities of the subcommittee were not so clearly related to the adjudicative function of the branch, application of the test for public access to branch records adopted by the Supreme Court in *Clerk of the Superior Court* militates against a finding that the subcommittee's work served any of the branch's administrative functions.

"We conclude that the judicial branch's administrative functions, as that phrase is used in [General Statutes] § 1-200(1)(A), consist of activities relating to its budget, personnel, facilities and physical operations." *Clerk of the Superior Court*, supra, 278 Conn. at 36. Obviously the subcommittee's activities have nothing to do with the branch's budget, facilities or physical operations. Mr. Sargent argues that "personnel" is not limited in meaning to the branch's employees; otherwise, the Court would have used that word. The term "personnel" should be

given a broad interpretation to include persons who serve as GAL's and attorneys for minor children.

We know, however, from *Clerk of the Superior Court* that the legislature intended "for the phrase 'administrative functions' to be construed narrowly." Id., 39. Or, as the Court put it in *Rules Committee*, "(t)he legislative history . . . supports a restrictive reading of the term 'administrative'." *Rules Comm.*, supra, 192 Conn. at 242.

A literal reading of the definition of "administrative functions" found in *Clerk of the Superior Court* provides the narrow construction of the term required. Applying the possessive pronoun "its" to each of the nouns in the definition makes clear that the "administrative functions" of the branch consist of activities relating to *"its personnel,"* i.e., the branch's employees. This restrictive reading of the formulation adopted by the Court in *Clerk of the Superior Court* excludes those persons appointed but not employed by the courts, like GAL's and attorneys for minor children. Thus, records having to do with the latter do not relate to the personnel of the branch and are not accessible via the act.

Through a series of strained hypotheticals Mr. Sargent attempts to argue that the subcommittee was not a "judicial entity" and, therefore, the "administrative functions" limitation on disclosure under the act does not apply to it. Plaintiff's Brief, supra, 14-15. First of all, the act does not speak of "judicial entities." It applies to any "judicial office, official, or body or committee thereof but only with respect to its or their administrative functions . . . ." General Statutes § 1-200 (1)(A). It is difficult at best to understand how a subcommittee appointed by the chief justice, who is the "head of the Judicial Department and . . . responsible for its administration"; General Statutes § 51-1b (a); composed of members of the branch and with a charge to study and report back to the chief justice recommendations for improvements in the way GAL's and attorneys for minor children are selected, trained and monitored could be anything other than a "committee" of a "judicial official."

V

This court has held that the records of the subcommittee at issue here are related to the adjudicatory function of the courts. They are, therefore, "categorically exempt from the provisions of the act." *Clerk of the Superior Court*, supra, 278 Conn. at 42.

Whether or not the records are related to the branch's adjudicatory function, they are *unrelated* to any of the branch's administrative functions, as that term is defined in *Clerk of the Superior Court*, and are, therefore, exempt from disclosure under the act. Id., 53.

Accordingly, the decision of the commission is affirmed. The appeal is DISMISSED.

BY THE COURT

Joseph M. Shortall
Judge Trial Referee