

My question regarding confidentiality of Motions for Discipline by Consent

Subject: In re Adam Luke Brent, Docket Nos IV-2014-017 and IV-2014-028

Dear Director Centinaro:

Would you please provide me with your thoughts regarding District IV Secretary Palm's denial of my request for records related to the captioned matters against Mr. Brent?

Here is the timeline:

1. In January and February 2015, formal complaints against Mr. Brent were filed in both of the captioned matters.
2. On January 12, 2016, after noticing that both of the Brent matters disappeared from the Statewide Public Hearing List, I submitted a request to Mr. Palm for "the Hearing Panel Report or other record that shows the ethics case's disposition."
3. After receiving Mr. Palm's January 20, 2016 e-mail telling me that "there are not hearing panel reports nor final dispositions," I sought clarification by way of a January 21, 2016 e-mail.
4. In response to my January 21, 2016 e-mail, Mr. Palm sent me an e-mail the same day stating "Not resolved, motions pending."
5. On January 22, 2016, I submitted another records request to Mr. Palm for the "certifications and briefs in support of and in opposition to any motions pending in IV-2014-017 and IV-2014-028. If there are no certifications or briefs, I ask that you send me the motions themselves."
6. In his January 29, 2016 e-mail, Mr. Palm denied my request stating that "the motion documents that you seek are not public records."

I think Mr. Palm is wrong. The confidentiality provisions of R.1:20-9 pertain only to records that were made "prior to the filing and service of a complaint." Since the complaint was filed and served a year ago, I don't see any basis for Mr. Palm's denial.

Please clarify. Thank you.

Very truly yours,

John Paff

Centinaro's response

Dear Mr. Paff:

As requested, I have reviewed the above-referenced disciplinary matters and agree with Mr. Palm's determination that the motion filed in these matters is not a public record. The motion to which Mr. Palm was referring was a motion for discipline by consent filed pursuant to New Jersey Court Rule 1:20-10. This motion was submitted to the Disciplinary Review Board for its consideration, but was denied.

While you are correct that, as a general rule, disciplinary matters and all written disciplinary records are only confidential up the point in time when a complaint has been filed and served, as in this case, motions for discipline by consent are treated differently. New Jersey Court Rule 1:20-9(d) provides that motions for discipline by consent are only available for public inspection and copying upon the approval of the motion by the Disciplinary Review Board. Additionally, New Jersey Court Rule 1:20-10(b)(3) provides that in the event the Disciplinary Review Board denies a motion for discipline by consent, "the disciplinary proceeding shall resume as if no motion had been made." Our interpretation of these rules is that unapproved motions for discipline by consent are intended to be treated as distinct from others that may be released upon the filing of a complaint. Since the motion for discipline by consent filed in these matters was not approved, it is not available for public inspection.

I hope that I have addressed your concerns.