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N.J. Court Says Public Law-School Clinics Aren't Immune From Open-Records Law

By Peter Schmidt

Defying the wishes of several national associations dealing with legal education, an appeals court in New Jersey has denied the legal clinics of that state's public law schools immunity from its open-records law, exposing them to new document requests that could greatly complicate their work.

In a ruling issued on Monday in a case involving Rutgers University and its environmental-law clinic, a three-judge panel of the New Jersey Superior Court's appellate division unanimously held that such clinics are as subject to the state's Open Public Records Act as any other type of public institution.

The ruling overturned a trial court's 2008 decision in favor of the university, rejecting that court's conclusion that the Rutgers law school's clinics are exempt from the open-records law because of their "unique situation as a hybrid institution, an academic institution, and a law firm which represents clients."

The appellate panel held that other state laws governing attorney-client privilege sufficiently protect such law clinics from having to disclose confidential information that would compromise their ability to represent their clients. The panel also rejected the argument—put forward by the university and in a friend-of-the-court brief filed by American Association of University Professors, the Clinical Legal Education Association, and the Society of American Law Teachers—that subjecting public law-school clinics to open-records requests would burn up their time and resources and put them at a disadvantage in opposing lawyers who do not work for public agencies and so are not covered by such records requests.

The appellate court held that "any alleged disadvantage resulting from the clinic's association with the university and its law school is offset by the advantage the clinic receives in the form of public funding" and "is a reasonable burden to bear to advance a policy of accountability and transparency."

"With the acceptance of public funds comes the accountability and

transparency that all publicly financed institutions must endure," said the appellate ruling, which was written by Judge Jose L. Fuentes.

'An Absurd Result'

The case at hand involved a lawsuit brought against Rutgers University and the Rutgers Environmental Law Clinic by a real-estate developer whose plans to build an outlet mall were unsuccessfully opposed by a citizens' group represented by the clinic. Lawyers for the developer, Sussex Commons Associates, are seeking documents that, they believe, will show that the owner of two existing outlet malls conspired with the citizens' groups and the clinic to thwart Sussex Commons's mall plans.

The Rutgers School of Law, in Newark, issued a statement on Monday saying the appeals court's decision "will make it more difficult for our clinical program to carry out its mission."

"As a result of today's decision, our clinics and our clients may be treated differently from every other legal-service provider in New Jersey, and our adversaries will be able to pursue discovery outside of the normal rules," the statement said. It argued that the state's Legislature, in passing the open-records law, "could not have intended such an absurd result."

Kathi S. Westcott, associate counsel of the American Association of University Professors, said having to comply with open-records requests will put "a huge additional burden" on public law-school clinics that have "very limited budgets," and might discourage them from taking on certain cases or clients.

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