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Court of Appeals Rules on Law Firm Trade Secrets Claim

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Over the past generation, lawyers have increasingly moved from firm-to-firm in private practice. Most moves occur with relatively little drama and, when there are issues over points like notice to clients, WSBA Advisory Opinion 201801 (2018) and ABA Formal Opinion 99-414 (1999) offer practical guidance to law firms and departing lawyers on their obligations under the professional rules.

The Washington Court of Appeals, however, recently issued a relatively rare decision involving a trade secrets claim by a law firm against a departing lawyer. *Hudson v. Ardent Law Group, PLLC*, 2023 WL 2859334 (Wn. App. Apr. 10, 2023) (unpublished), involved a law firm that had a very focused practice representing clients in real estate time share disputes. The firm had developed tailored forms and collected a large amount of electronic data for use in handling client work. While still employed by the firm, a lawyer secretly copied the firm's entire client database. The lawyer then left the firm to start a competitor and used the information in an effort to recruit the firm's clients.

Litigation followed. The law firm pursued, among other counts, a Uniform Trade Secrets Act claim against the lawyer under RCW Chapter 19.108 centered on the client database. A jury found that the lawyer had misappropriated the

firm's trade secrets. The Court of Appeals affirmed. The appellate decision focuses primarily on whether the jury had been properly instructed. The Court of Appeals concluded that the trial court had appropriately used the relevant Washington Pattern Jury Instructions.

WPI 351.02 defines a "trade secret":

Washington law prohibits misappropriation of a trade secret. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Most disputes between law firms and departing lawyers over clients and files will not involve "trade secrets." Depending on the circumstances, however, misappropriation of specialized information such as proprietary client or marketing data may rise to the level of a Uniform Trade Secrets Act claim.

Hudson offers a rare discussion of Uniform Trade Secrets Act claims within the context of a law firm departure.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author and the editor-in-chief for the WSBA *Legal Ethics Deskbook* and is a contributing author and principal editor for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.