



Jeff Geiger Counters

Theft of Firm Files by Departing Lawyer?

By: Jeff Geiger. *This was posted Tuesday, February 9th, 2010*

So you are a fifteen-year associate at a law firm with apparently limited future prospects. What would you do? How about plotting your leave by copying client files, have your girlfriend hack into the firm's computer system and change client contact information. Oh, and then falsely tell clients that the partner is retiring from the practice of law.

Straight from sunny Florida, these facts arise from a recent appellate decision overturning a \$1.47 million verdict in favor of the spurned law partner. *Winters v. Mulholland*, 2010 WL 323035, Dist. Ct. App. (2nd Div.), Case No. 2D08-5270 (Jan. 29, 2010). While there is no indication whether there were disciplinary proceedings related to the lawyer's departure, the District Court of Appeals made the following understatement: "The facts in this case are enough to make any legal ethics professor cringe."

At issue was whether the departing attorney's actions amounted to civil theft under Florida law. The court of appeals noted that: "There is no real question that these activities constitute the unauthorized use of Mulholland's client files, misappropriation, fraud, and deception. Thus, Mulholland did prove that a 'theft' occurred. However, it is not enough for a plaintiff prosecuting a cause of action for civil theft to show only that a theft of his or her property occurred. Instead, [the statute] also requires the plaintiff to prove by clear and convincing evidence that he or she was injured 'by reason of any violation' of the listed theft statutes."

In reversing the jury's verdict (as modified by the trial court), the court of appeals concluded that:

"In this case, however, Mulholland presented no evidence to prove that the theft was connected to the loss of his clients and thus was the cause of his damages. For example, Mulholland presented no evidence that any client chose to leave Mulholland and go with Winters because Winters had a copy of their file. While Winters may have made unauthorized use of Mulholland's paper files, in the absence of some evidence that Mulholland was injured by Winters' having taken and copied these files, the evidence is insufficient to support a judgment for civil theft."

A copy of the decision can be found [here](#).

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