

Michigan Court of Appeals Strikes Employment Confidentiality Clause in Severance Agreement

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On January 14, 2003, in a case of first impression, the Michigan Court of Appeals held that an employment confidentiality clause contained in a severance agreement between a school district and its former superintendent was void and unenforceable. The case, *Mino v Clio School Dist*, involved interpreting the Michigan Revised School Code Section 380.1230b(6), which "has the effect of suppressing information about unprofessional conduct of an employee or former employee."

Amid various complaints and rumors regarding his professional performance, Mino decided to look for work outside the district after seven months of employment as superintendent. The complaints were regarding the plaintiff's leadership skills, lack of visibility, negotiations with the union, and the rumors were that he was having an extramarital affair, making sexual telephone calls at work, and had touched local waitresses inappropriately. As a result, the school district and the plaintiff entered into a severance agreement which stated in pertinent part "Unless required by law to do so, the Clio Area Schools will not disseminate negative information about Dr. Mino to any person or organization inside or outside of the Clio Area Schools." (emphasis in original).

Mino applied for a job as superintendent with a school district in Idaho, which in turn, sent a four person search team to Clio to gather information. During their visit, it was alleged that various members of the district's staff told the search team that they were prevented from saying anything negative about Mino, that they might hear rumors about the him regarding inappropriate touching, and finally that a school board member told the team that they did not recommend Mino because of his leadership style. Mino did not receive the Idaho position and filed an 11 count complaint against the Clio school district, various board members, the assistant superintendent, and various school principals, including a breach of contract claim relating to the confidentiality clause.

The Michigan Court of Appeals upheld the trial court's decision to grant the defendants' motion for summary disposition on the breach of contract claim. The court held that the plain and ordinary meaning of the Michigan Revised School Code was clear that school districts could not enter into any agreement which had the effect of "suppressing information about unprofessional conduct." The court found that the phrase "negative information" encompassed the statutory phrase "unprofessional conduct" and ruled that the severance agreement was void and unenforceable as a matter of law. In a footnote the court stated that "even if we were to hold this confidentiality clause enforceable, in light of this statute, it would be rendered meaningless because of its terms barring this clause 'except as required by law.'" Thus the school district's attempt to stay within the confines of MCL 380.1230b(6) did not save the agreement.

While the decision does not come as a surprise in light of the clear language of MCL 380.1230b(6), it provides school districts with support for the position that they cannot enter into confidentiality agreements with current or former employees which have the effect of suppressing information regarding unprofessional conduct.

To discuss any questions or related issues, please feel free to contact our Labor and Employment Group, Tony Duerr at (734) 668-7846, email: duerr@millercanfield.com; or Anne Blake-Dreher at (313) 496-7651, email: blake-dreher@millercanfield.com. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.