

## Wednesday, September 7, 2022 (all times EDT)

**7:30 — 8:30 Breakfast & Registration****8:30 — 8:45 Welcome and Introductions***[Almeling, Cundiff, Weinlein]***8:45 — 10:30 Draft Commentary Review: What Is Or Is Not A Trade Secret***[Beck\*, Buziak, Chow, Freeman (J.), Kreiter, Morton\*, Pooley, Skoff]*

- Is Confidential Information Co-Extensive With Trade Secrets?
- What Is Or Is Not A Trade Secret – How To Distinguish Between Trade Secrets And An Employee's Skill, Knowledge And Experience
- Drafting, Information Management, And Litigation Perspectives

**Materials**

- 1.1 WG12 Draft Commentary on What Is/Is Not the Subject of Trade Secret Protection (Sept. 2022 ed.)
- 1.2 J. Pooley, The Artificial Distinction Between Trade Secrets and Confidential Information, [www.ipwatchdog.com](http://www.ipwatchdog.com) (July 28, 2022)
- 1.3 C. Hrdy, The General Knowledge, Skill, and Experience Paradox, 60 B.C.L. Rev. 2049 (2019)
- 1.4 R. Alley, Business Information and Nondisclosure Agreements: A Public Policy Framework, 116 Northwestern University Law Review 817 (2021)
- 1.5 S. Kayman, Just How Secret Is It? Can Mere Confidential Information Be Legally Protected? (Link Provided in Materials)

**10:30 — 10:45 Break****10:45 — 12:15 Draft Commentary Review: Sharing Trade Secrets With Other Organizations***[D'Angelo, Engler, Fine, Hayes\*, Parsons (J. ret.), Pelletier\*, Saeedi, Schroder]*

- Protecting Trade Secrets With Contractual, Physical, And Technological Tools Before, When, And After They Are Shared, From The Disclosing Party's Perspective And The Receiving Party's Perspective
- Identifying/Discussing Potential Issues When Sharing Trade Secrets And Suggesting Pragmatic, Potential Solutions In Light Of Marketplace Realities
- The Dialogue Leaders Will Discuss And Elicit Membership Feedback On The Status, Outstanding Issues, And Direction Of This Draft Commentary

**Materials**

- 2.1 WG12 Draft Commentary on Sharing Trade Secrets With Other Organizations (Sept. 2022 ed.)
- 2.2 D. Pelletier, Never Out Of Style: Properly Tailored Inevitable Misappropriation Claims And Contractual Provisions, (July 21, 2022).
- 2.3 J. Pooley, Trade Secret Diligence in Mergers and Acquisitions, [ambar.org/gpsolomag](http://ambar.org/gpsolomag) (July/August 2021)
- 2.4 N. Galli, Why Identifying Your Trade Secrets Is Essential In Joint Ventures, [www.americanbar.org](http://www.americanbar.org) (October 29, 2019)

**12:15 — 1:45 Lunch****Wednesday, September 7, 2022 (Continued)****1:45 — 3:15 Draft Commentary Review: Ethics Issues In Trade Secrets Disputes***[Cameron-Banks, Fink\*, Morris, O'Toole, Prewitt, Saeedi, Shenian, Stein (J.) ]*

- Representing Multiple Clients; Avoiding Meritless Claims And Defenses
- Potential Misappropriation Red Flags; Interplay Between Criminal And Civil Lawsuits
- The Dialogue Leaders Will Discuss And Elicit Membership Feedback On The Status, Outstanding Issues, And Direction Of This Draft Commentary.

**Materials**

- 3.1 WG12 Draft Commentary on Ethical Issues In Trade Secrets Disputes (Sept. 2022 ed.)
- 3.2 J. Kenedy, Virtual Office, Virtual Litigation, Real Trade Secrets, and Real Ethics, Lord Locke LLP (July 19, 2021)
- 3.3 J. Kenedy, Trade Secrets, Ethics and the New Normal of COVID 19, Lord Locke LLP (August 19, 2020)
- 3.4 J. Kenedy, Trade Secrets, Ethics and Maintaining Technological Competence, Lord Locke LLP (2020)
- 3.5 ABA Ethics Formal Opinion 497
- 3.6 ABA Ethics Formal Opinion 498
- 3.7 ABA Ethics Opinion 477 – Securing Communication of Protected Client Information (May 4, 2017)
- 3.8 ABA Model Rule of Professional Conduct 3.4
- 3.9 ABA Model Rule of Professional Conduct 1.2
- 3.10 ABA Model Rule of Professional Conduct 4.1
- 3.11 ABA Model Rule of Professional Conduct 1.6

**3:15 — 3:30 Break**

**3:30 — 5:00 Voices From The Bench: Judicial Perspectives For 2022 And Beyond***[Bowbeer (J. ret.), Doyle (J.), Freeman (J.), Parsons (J. ret.), Stein (J.), Cundiff\*]***Materials**

- 4.1 WG12 Commentary on Monetary Remedies in Trade Secret Litigation, Public Comment Version (May 2022 ed.)
- 4.2 WG12 Commentary on Equitable Remedies in Trade Secret Litigation (March 2022 ed.)
- 4.3 WG12 Commentary on the Proper Identification of Asserted Trade Secrets in Misappropriation Cases (Oct. 2020 ed.)

**5:00 — 5:15 Closing Remarks for Day One****Thursday, September 8, 2022****7:30 — 8:30 Breakfast & Registration****8:30 — 9:30 State Of WG12, Where We've Been And Where We Are Going – How Are The Sedona Conference Commentaries Being Used? Open Questions And Future Commentaries***[Almeling\*, Gerardi, Herbert, Linderman, Weibust]*

- Sedona Commentaries In The Courts And In Practice
- Potential New Commentaries For Discussion:
  - Model Jury Instructions Under The DTSA
  - How To Ensure That “Clean Rooms” Are Truly “Clean”: Lawful Reverse Engineering
  - What Is Misappropriation And What Remedies Are Appropriate For Different Types Of Misappropriation?
  - Attorney Fees And Exemplary Damages

- Other Suggested Topics?

**9:30 — 11:00 Draft Commentary Review: Forensic Issues In Trade Secret Disputes***[Doyle (J.), Falk, Ostroff, Racich, Vaughn\*]*

- Pre-Litigation Forensic Investigations
- Forensics In Expedited Discovery Proceedings
- The Role Of Court Appointed/Independent Forensic Neutrals
- Initial Disclosures And Discovery Of Forensics
- Forensic Remediation As A Remedy

**Materials**

6.1 WG12 Draft Commentary on Forensics in Trade Secret Disputes (Sept. 2022 ed.)

**11:00 — 11:15 Break****11:15 — 12:00 Trade Secrets Across Borders: A World Of Emerging Issues***[Cooper, Kay, Pade, Pooley]*

Our Prior Work Has Focused On The Extraterritorial Reach Of Trade Secrets Law And Selected Issues Concerning Cross-Border Discovery. A Discussion Of Work From The Joint Patent And Trade Secret Teams: Cross-Border Discovery Phase II Including:

- Extraterritoriality Considerations Under Federal And State Trade Secrets Laws Including 18 U. S. C. §1837
- Managing Discovery Requests Under 28 U. S. C. §1782
- Cross-Border Discovery Considerations
- Attorney-Client Privilege Considerations

**Materials**

7.1 WG12 Commentary On Cross-Border Discovery in US Patent and Trade Secrets Cases (May 2021 ed.)

7.2 WG12 Framework for Analysis on Trade Secret Issues Across International Borders: Extraterritorial Reach (June 2022 ed.)

**12:00 — 12:15 Break****12:15 — 1:30 In-House Perspectives On Managing Trade Secrets And Litigation About Them: How Can We Ensure Productive Consensus?***[Berkley, Bowbeer, J. ret., Cundiff\*, D'Angelo, Linderman, Miller, Schroder]***Materials**

8.1 WG12 Commentary on the Governance and Management of Trade Secrets (April 2022 Public Comment Version)



The 2022 Annual Meeting of The Sedona Conference Working Group on  
Trade Secrets (WG12)

The Hyatt Regency Reston, Reston, VA  
September 7–8, 2022

**AGENDA**

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**1:30 – 1:35 Closing Statement**

*[Weinlein]*

**1:35 – 2:15** Grab and Go Lunch (provided) – If your schedule permits, please stay for lunch and conversation