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POSTEMPLOYMENT RESTRICTIVE COVENANTS AND ATTORNEYS: THE ENFORCEABILITY TREND CONTINUES AS THE BROZOST COURT ISSUES A PRELIMINARY INJUNCTION AGAINST COMPETITIVE PRACTICE

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ABSTRACT

Restrictive covenants are included in many employment contracts. In today's economy, valuable employees are often tempted away by competitors, taking with them years of experience, knowledge, and skill. To limit the amount of damage suffered in that inevitable circumstance, employers offer contracts containing clauses that would prevent the employee's solicitation of customers, disclosure of information, or competitive employment. Attorneys are now faced with similar clauses, and courts have generally invalidated them. However, there is a trend to uphold trade restrictions against attorneys and in favor of former employers. This article attempts to address the potential pitfalls department attorneys now face.

At first it seemed silly. A radio station was suing a man in a chicken suit. However, a California court quickly stifled any temptation to make light of the suit at the outset of its opinion, noting that the case dealt with the serious matter of "an employer's asserted contract rights and the fundamental rights of an employee to earn a living . . ." [1]. The radio station, KGB, Inc., sought to bar its former employee, Ted Giannoulas, from wearing the chicken suit he had donned in the past as the station's mascot [1, at 571].

Giannoulas had been the KGB Chicken for years. His alter ego was renowned for the comical antics and crowd-pleasing pranks he performed at baseball games in San Diego. After he terminated his employment with KGB, he acquired a new

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chicken suit and became a freelance attraction at the games [1, at 584, n. 4]. KGB argued that his performance violated a clause in his employment contract. That clause provided that when Giannoulas terminated his employment with KGB, he was not to "act as a mascot of any radio station other than KGB, Inc., in the San Diego market" [1, at 580].

The above-quoted language is similar to that found in many employment contracts, embodying a "postemployment restrictive covenant." Restrictive covenants are often incorporated in the original contract signed at the time employment commences. They are usually enforced when employment is terminated. Typically, the covenants seek to prevent departing employees from 1) competing against their former employer; 2) divulging trade secrets; and 3) soliciting customers of their former employer [2].

POSTEMPLOYMENT RESTRICTIVE COVENANTS: HISTORY AND OVERVIEW

The Rule of Reason

The first known attempt to impose a restraint on future employment was not well-tolerated by fifteenth century courts [3]. More recently, however, a "rule of reason" has been applied to the enforcement of restrictive covenants [4, p. 1027]. This rule, developed in the eighteenth century, requires "courts to decide whether the limitations in the contract are reasonable in length and geographic extent, and whether the nature of the employer's business and the employee's work make such a restriction appropriate" [4, p. 1027]. Courts must balance the interests of the employer, the employee, and the public to determine the enforceability of a restrictive covenant [2].

Under the reasonableness test, courts acknowledge that competition within any given industry should not be banished outright. Instead, the enforcement of restrictive covenants is limited to those times when the employer's interest in preventing unfair competition outweighs the burden placed on the departing employee [2, p. 185]. Further, the courts must factor in public policy concerns: "promotion of competition, maintenance of adequate supplies of services, and full use of labor resources" [2, p. 188].

Most states follow a modern version of the "rule of reason," which provides:

> (1) A promise to refrain from competition that imposes a restraint that is ancillary to an otherwise valid transaction or relationship is unreasonably in restraint of trade if
>
> (a) the restraint is greater than is needed to protect the promisee's legitimate interest, or
>
> (b) the promisee's need is outweighed by the hardship to the promisor and the likely injury to the public.

(2) Promises imposing restraints that are ancillary to a valid transaction or relationship include the following:

(a) a promise by the seller of a business not to compete with the buyer in such a way as to injure the value of the business sold;

(b) a promise by an employee or other agent not to compete with his employer or other principal;

(c) a promise by a partner not to compete with the partnership [5, § 188].

The Elements of an Enforceable Covenant

After years of applying the "rule of reason" courts noted the emergence of four basic elements of an enforceable restrictive covenant. First, the covenant must be ancillary to an employment contract. Generally, courts have held this to mean that the rest of the employment contract had to be valid on its own before the covenant would be reviewed.

Second, adequate consideration must be offered to the employee in exchange for his/her promise not to compete. If the covenant is entered into at the beginning of employment, courts have held that the job itself constitutes adequate consideration [6]. If the covenant is entered into after employment has started, it must be "supported by new consideration which could be in the form of a corresponding benefit to the employee, or a beneficial change in his employment status" [7, at 1387].

Third, the restrictions placed on the employee must be limited in duration and geographic scope. Courts will not enforce covenants that seek to prevent competition for an indefinite period of time [8] or over a very broad territory. This determination is made by a review of the specific facts of each case.

For example, one court upheld a restrictive covenant that encompassed the entire country [8]. In that case, the former employee was in charge of Internet presentations. The court noted that "[a]lthough nationwide covenants are disfavored, in [that] case both [competing endeavors were] nationwide businesses" [8, at 708]. Accordingly, the court held that a nationwide restriction on the former employee's activities would be reasonable [8, at 708].

Finally, the covenant must be designed to protect a legitimate employer interest [8, at 707; 9, 10, 11, 12]. A legitimate employer interest may include the goodwill of its customers. Courts will allow employers to protect the interest they have in maintaining that goodwill and furthering relationships developed over the years with customers [8]. Similarly, employers are afforded protection against disclosure of confidential information and trade secrets [13].

If these four elements are met, the court applies the reasonableness test. After balancing the various interests and reviewing the content of the covenant, the court makes a determination as to the enforceability of the restrictive clause. If any of the elements are found to be missing or unreasonable, the court will either invalidate the covenant in its entirety or invoke the "blue pencil" doctrine.

The Blue Pencil Doctrine

When the reasonableness test is applied, courts often find the contract would be enforceable but for the inclusion of some unreasonable term [2, p. 196]. For example, the period of time during which an employee would be barred from competing and thereby barred from working in his/her chosen field may be considered too long. The geographic scope of the covenant may be too broad.

In those instances, some courts opt to edit the covenant to render it enforceable [2, pp. 196-197]. Under this so-called "blue-pencil rule," the court may simply delete the offensive terms or modify them to a more reasonable standard [2, p. 197].

RESTRICTIVE COVENANTS IN ATTORNEY CONTRACTS

Case Law Invalidating Attorney Covenants

While the reasonableness test may be applied to find a restrictive covenant enforceable in most commercial contexts, courts have declined to apply a similar standard to such clauses in attorney employment contracts [14]. Public policy issues have been cited to justify this distinction [14, at 173]. For example, the *Dwyer v. Jung* court stated:

> Commercial standards may not be used to evaluate the reasonableness of lawyer restrictive covenants. Strong public policy considerations preclude their applicability. In that sense lawyer restrictions are injurious to public interest. A client is always entitled to be represented by counsel of his own choosing . . . The attorney-client relationship is consensual, highly fiduciary on the part of counsel, and he may do nothing which restricts the right of the client to repose confidence in any counsel of his choice . . . [15, at 500].

Similarly, the Supreme Court of New Jersey pointed to each person's unfettered right to choose an attorney to represent his/her interests [16]. To deny the right, the court warned, would be to treat unwitting clients "like objects of commerce, to be bargained for and traded by merchant-attorneys like beans and potatoes" [17].

Even when the restrictive covenant in question did not impose a direct restraint on competitive practice, courts have been wary of enforcing alternative penalties [18]. In the leading case of *Cohen v. Lord, Day and Lord,* for instance, New York's highest court declined the invitation to impose a hefty forfeiture penalty on a departing partner [19, at 411]. Under Cohen's employment contract, if he competed against his former employer, he would not have been entitled to partnership revenues the firm owed him [18]. The court invalidated the provision. It held "that while the provision in question [did] not expressly or completely

prohibit a withdrawing partner from engaging in the practice of law," the forfeiture penalty was significant enough to constitute "an impermissible restriction on the practice of law" [19, at 411].

Model Rules and Public Policy

Like other courts that have addressed the issue, the *Dwyer* and *Cohen* courts cited public policy concerns in choosing to invalidate restrictive covenants in attorney employment contracts [18, p. 61]. This trend reflects the guidance provided by the professional code of conduct applied to lawyers [14, p. 164]. In all but one state, that ethical code is based on the American Bar Association's Model Rules of Professional Conduct [20]. By virtue of those rules, attorneys are prohibited from "entering into agreements that restrict their right to practice after termination of a relationship with a firm" [14, p. 163]. Specifically, Rule 5.6 provides:

> A lawyer shall not participate in offering or making:
> (a) a partnership, shareholders, operating, employment or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
> (b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties [21].

Courts look to this code to establish a uniform standard by which the enforceability of attorney restrictive covenants can be tested [14, p. 164]. As such, the public policy concerns reflected in the code are echoed in relevant court decisions [8, 9, 10, 11, 12].

The drafters of the Model Rules noted that restrictive covenants unduly prohibit the client's right to freely choose counsel [21, Comment]. Client interests are further protected by Rule 5.6 because it "prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client" [21, Comment]. Another underlying policy for the rule is thought to be the promotion of market competition [14, p. 173].

Case Law Upholding Attorney Covenants

While most courts seem to rely on those public policy considerations and the ethical tenets proffered by the Model Rules, a trend of enforcing restrictive covenants against lawyers seems to be emerging [22]. The California Court of Appeals enforced a forfeiture provision against seven departing partners in *Haight, Brown & Bonesteel v. Fitzgerald* [23]. There the court abandoned the customary interpretation of the Model Rules in favor of a balancing test traditionally applied in other industries [22, pp. 800-801]. The court noted the provision allowed the departing partners to practice competitively while preserving the stability of the law firm. "Only an agreement that required the attorney to

completely refrain from practicing law would be an impermissible violation of the Rules of Professional Conduct" [22, p. 800].

The *Haight* decision was the first of its kind [22, p. 801]. Under that ruling, attorneys were now facing the courts' enforcement of restrictive covenants in defiance of ethical standards [24]. Just two years after *Haight,* the California Supreme Court announced its concurrence with the ruling in *Howard v. Babcock* [25]. There the court asserted its position that lawyers should not be treated any differently from other professionals [25, at 160]. In rejecting the previous habit of finding attorney restrictive covenants invalid per se, the court "expressly stated that it was seeking a balance between the client's interest in free choice of counsel and the law firm's interest in a stable business environment" [22, p. 802; 25, at 160]. Again, if a lawyer was completely barred from competing with his/her former employer, the agreement would have been unenforceable. However, the court noted, it would uphold those covenants that reasonably limited competition within a specific territorial radius [22, p. 802; 25, at 160].

These decisions signal a new approach to the interpretation and enforcement of attorney restrictive covenants. Departing attorneys who are subject to such contractual provisions could now face two problems. First, the attorney would have violated the Rules of Professional Conduct by signing the contract. Second, a reviewing court could possibly ignore the ethical code previously relied on in favor of enforcing the restrictive covenant against the attorney.

Equitable Considerations

This raises another concern. Courts may soon begin to take equitable considerations into account to further justify the enforcement of attorney restrictive covenants. In that case, attorneys would not be allowed to rely on Rule 5.6 to argue that their practice was unfairly restricted when they violated that very rule by signing the contract in the first place. Courts could assert the principles of waiver, unclean hands, or *in pari delicto* to bar the attorney's claim [14, p. 175].

Thus far, reviewing courts have refused to apply equitable doctrines to attorney restrictive covenant disputes [22, pp. 802-803]. When the New Jersey Superior Court attempted to use its equity power to enforce a forfeiture clause, the Supreme Court of New Jersey reversed [22, p. 803]. The lower court found the departing attorneys had violated Rule 5.6 just as much as the employer firm had. "The court concluded that if the agreement was in fact illegal, both the plaintiffs and the defendants should bear the burden of illegality equally" [22, p. 803]. Accordingly, the court sought to enforce the provision to avoid unfairly rewarding the departing attorneys whose hands were just as unclean as the employer firm's. On appeal, the Supreme Court of New Jersey reversed that decision by relying on the traditional "void as against public policy" language [22, p. 803].

Nonetheless, the possibility should not be ignored. In the *Cohen* dissent, Judge Hancock noted that the plaintiff had known about the agreement for twenty years and had, in fact, enjoyed its benefits when it was applied to partners who left the firm before him [22, p. 803]. It seemed unfair to Judge Hancock that the plaintiff now sought to invalidate the contract after twenty years of passive acceptance [22, p. 803].

It seems clear that the *Cohen* dissent and the reversed *Jacobs* ruling signal a growing inclination to apply equitable standards to attorney restrictive covenants. That inclination, coupled with the recent application of a balancing test to attorney restrictive covenants, makes it increasingly difficult for attorneys to escape contractual restraints. Attorneys should beware. After intentionally violating Rule 5.6 by agreeing to a restrictive covenant, attorneys are now more likely to be bound by the terms of the contract.

A NEW METHOD OF RESTRAINT

The Brozost Decision

While the best path would be to avoid Rule 5.6 violations, a 1997 Pennsylvania decision indicates that attorneys may be restricted even in the absence of a signed agreement [26]. In *Hyman Companies v. Brozost,* the court partially granted a motion to enjoin an attorney's employment with a competitor. The attorney had not signed any employment contract with his former employer [26, at 170], and yet the court saw fit to limit the scope of his practice when he joined a competing company [26, at 175].

Michael Brozost was the general counsel and vice president of The Hyman Companies, Inc. when he left to work for competitor, Erwin Pearl, Inc. at the beginning of 1997. He had practiced real estate law for nearly three decades in a variety of positions. Prior to his employment at Hyman, he had worked as real estate counsel for Southern Railway and for J.C. Penney. After that, he was in-house counsel for a real estate developer, The Goodman Company [26, at 170].

Hyman hired Brozost in October 1993 as general counsel, subsequently promoting him to vice president of the corporation. The company operates a chain of retail stores from which "high-end costume jewelry" is sold. The stores are located at forty-two different sites throughout the United States and Canada. Part of Brozost's job was to inspect those sites and negotiate lease contracts [26, at 170].

Although Hyman's principal office is in Allentown, Pennsylvania, Brozost worked out of the Florida office. While there, he represented Hyman in legal matters related to every facet of the business. Within the real estate department, he administered the leases, worked with real estate consultants, and developed relationships with landlords, developers, and hotel chains [26, at 170].

As part of his activities, Brozost discussed a variety of matters with Hyman:

1) the profitability of individual stores and which regions and stores were the most profitable;
2) general criteria for choosing store locations, and how these criteria applied to specific locations;
3) innovative retail locations;
4) potential expansion opportunities, including which other retailers might be willing to sell stores;
5) which stores Hyman would be willing to sell and at what price;
6) arguments for why developers should choose Hyman over his competitors as a tenant;
7) specific hiring criteria; and
8) plans for Hyman's future [26, at 170].

The only information Hyman did not share with Brozost was the salary of other executives in the company. Otherwise, Brozost was given complete access to any information he needed. He thus gained information such as the identity of the suppliers of Hyman's computer system and insurance; Hyman's criteria for lighting and merchandising jewelry cases; and the design of those cases. Additionally, "[h]e received profit and loss statements for stores when he needed to negotiate either for rent relief or for lease renewals" [26, at 170].

So when Brozost decided to sever his ties with Hyman, he took a wealth of knowledge with him to the competitor's office. That happened in the first week of January 1997 [26, at 172].

Erwin Pearl first came into contact with Brozost about two years prior to the latter's resignation from Hyman. Brozost had contacted Pearl to discuss the possible sale or purchase of Pearl's stores. Evidently, Pearl was "[i]mpressed with Brozost's persistence, and presumably his general ability and his knowledge, both specific and general," such that he offered him a job [26, at 171].

Hyman filed suit against Brozost the very day he was dismissed from the premises of the Florida office [26, at 172]. Hyman sought a preliminary injunction to completely bar Brozost's employment with Pearl [26].

At the outset of its memorandum opinion, the court noted Brozost had not violated Rule 5.6 by entering into a restrictive covenant or a noncompete clause [26, at 170]. The court also pointed out that the legal ethics experts disagreed as to whether Brozost's employment with Pearl constituted a "conflict of interest and a breach of his fiduciary obligations as an attorney" [26, at 172]. Thus, the decision to partially limit the scope of Brozost's functions at Pearl was primarily based on a separate doctrine: the protection of trade secrets.

Attorneys and Trade Secrets

The protection of trade secrets is at the heart of many restrictive covenants, including those aimed at lawyers [2, p. 183]. Courts have upheld restrictive covenants designed to prevent the disclosure of confidential business information, holding that information to be a legitimate business interest under the reasonableness test [2, p. 184] 3 (Murray); 27]. However, when trade secrets are defined, the application of that standard to an attorney, as in *Brozost,* seems inappropriate.

In Pennsylvania, the definition of trade secrets is that outlined in Restatement of Torts § 757 comment b (1939):

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers [28, at 174].

However, as the *Brozost* court noted, a trade secret does not include general knowledge. Indeed, a departing employee is entitled to take with him "the experience, knowledge, memory, and skill, which he gained" during his tenure with the former employer [28]. Thus, the interpretation of certain information as trade secrets depends on several factors:

1) The extent to which the information is known outside the owner's business;
2) the extent to which it is known by those involved in the owner's business;
3) measures taken by the owner to guard the secrecy of the information;
4) the value of the information to the owner and his competitors;
5) the amount of effort and money expended by the owner to develop the information; and
6) the ease or difficulty with which the information could be acquired or duplicated by others [29, at 1256].

At best, a tenuous interpretation of trade secrets emerges when the standard is applied to the legal profession in the context of restrictive covenants. While it is clear that confidential client information is never to be disclosed without the client's consent [22, p. 805], it is not clear what other information gleaned by an attorney should be treated as a trade secret.

For example, an attorney like Brozost developed his skills after nearly thirty years of experience in different jobs. His ability to deftly negotiate lease agreements and select profitable locations is probably not as attributable to his tenure with Hyman as much as it is the result of a combination of innate skill, intelligence, and personal experience. So when he terminated his employment with Hyman, he took with him valuable information that cannot be defined as trade

secrets belonging to Hyman [30]. Nonetheless, the court held that Brozost was privy to confidential information, which should be protected [26, at 175].

The *Brozost* court's injunction was narrowly tailored to specific information and activities. However, it was unnecessary because Brozost already had an ethical duty to preserve his former client's confidentiality. Model Rule 1.6(a), provides that a "lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation" [21, Rule 1.6]. To enforce an injunction in addition to Brozost's preexisting ethical requirements is either redundant or indicative of the court's belief that an implied restrictive covenant was necessary to further protect Hyman's interests.

The court's decision therefore blurred the distinction between attorneys and other professions for the purposes of employment restrictions. The holding essentially enforced an implied restrictive covenant against the attorney, limiting the scope of his practice. But, the court ignored several facts: 1) there was no signed employment contract containing a restrictive covenant; 2) even if Brozost had signed a restrictive covenant, public policy and ethical considerations would render it unenforceable; 3) for the purposes of employment contracts, attorneys are treated differently from other professionals.

CONCLUSION

The radio station lost its chicken suit [1]. The court held that the provisions preventing Giannoulas from appearing in any chicken suit invalidly restricted "his right to earn a living and to express his talents" [1, at 588]. The chicken concept, the court noted, was successful because of the combination of Giannoulas' innate skill and talent, his personal experiences at each performance, and years of hard work. While not discounting the possibility that the radio station had some input, the court found Giannoulas' contribution to be of greater significance [1, at 583]. His performances were based on spontaneous reactions to constantly changing circumstances. The court held that KGB did not own that routine [1, at 583].

Similarly, an attorney's employer cannot claim to own that lawyer's specific skills. When an attorney goes to work for a firm, as in-house counsel or as a vice president in a retail company, he develops a routine over the years. The nature of the legal profession is such that an attorney's ability to negotiate a lease or scope out favorable store locations becomes his/her trade in stock. When that attorney subsequently terminates the relationship with the employer and moves to a competitor's office, it is difficult to distinguish between information that may constitute a trade secret [31] and his/her own knowledge that can be taken along and used for the competitor's advantage.

As such, courts should be hesitant to apply the trade secret standard in the context of restrictive covenants, noncompete clauses, or other restraints on the practice of law. The practice of law is an everchanging, fluid routine, unique to

each practitioner. Any limits placed on the scope of that practice threatens to unfairly restrain an attorney's trade. For once a limit is put in place, enforced, and upheld by a court, it becomes that much easier to place more restrictive terms into attorney contracts.

Other courts have already begun to remove the barriers that protected attorneys from unfair trade restraint by upholding previously unenforceable restrictive covenants. *Brozost* adds to the attorney's dilemma by imposing a nebulous standard of review. Employers may soon realize they can draft enforceable restrictive covenants against attorneys by citing protection of trade secrets. When the attorney departs to work for a competitor, the employer can now seek a preliminary injunction while the court wades through the various types of information revealed to the attorney during the course of his/her employment. If the court is successful at separating truly confidential client information from that which simply added to the lawyer's marketability, the attorney still faces potential injunctions and limitations on his/her practice.

Even if the attorney ultimately prevails, it is possible that during the course of the litigation she will be barred from working for the competitor until the matter is resolved. In the interim, the new client is deprived of the attorney's services, and the attorney is deprived of a livelihood. This type of trade restraint was precisely what the drafters of Model Rule 5.6 sought to prohibit. As the court noted in *Giannoulas*, there is no case "where it [is] regarded as unfair competition for a clown to change his employer" [1, at 579].

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ENDNOTES

1. *KGB, Inc. v. Giannoulas,* 164 Cal. Rptr. 571, 576 (Ct. App. 1980).
2. Jeffrey G. Grody, Partial Enforcement of Post-Employment Restrictive Covenants, 15 Col. *Journal of Law and Social Problems, 181,* p. 183, (1979).
3. Indeed, the judge to whom the proposal was made "became so enraged by an attempt to restrain a dyer from working in a town for just half a year that in bad French he cursed the deal void: 'By God, if the plaintiff were here he should go to prison until he paid a fine to the king.' " *Arthur Murray Dance Studios of Cleveland, Inc. v. Witter,* 105 N.E. 2nd 685, 691 (Ohio C.P. 1952) (citation omitted).
4. Mark A. Rothstein and Lance Liebman, *Employment Law,* (1027: Foundation Press 4th ed. 1998), New York, New York.
5. Restatement of Contracts 2d, § 188 (1981).

6. *Modern Laundry & Dry Cleaning Co. v. Farrer,* 536 A.2d 409, 411 (Pa. Super. 1988).
7. *Davis & Warde, Inc. v. Tripodi,* 616 A.2d 1384, 1387 (Pa. Super. 1992) (citation omitted).
8. "Pennsylvania courts routinely uphold one year restrictive covenants," *National Bus. Servs., Inc. v. Wright,* 2 F. Supp. 2d 701, 708, (E.D. Pa. 1998).
9. *George W. Kistler, Inc. v. O'Brien,* 347 A.2d 311 (Pa. 1975).
10. *Thermo-Guard, Inc. v. Cochran,* 596 A.2d 188 (Pa. 1991).
11. *Jacobson & Co. v. International Env't Corp.,* 235 A.2d 612 (Pa. 1967).
12. *Morgan's Home Equip. Corp. v. Martucci,* 136 A.2d 838 (Pa. 1957).
13. *Capital Bakers, Inc. v. Townsend,* 231 A.2d 292 (Pa. 1967).
14. Glenn S. Draper, Enforcing Lawyers' Covenants Not to Compete, 69 *Washington Law Review, 161, 163,* p. 163 (1994).
15. *Dwyer v. Jung,* 336 A.2d 498, 500 (N.J. Super. 1975).
16. *Jacob v. Norris, McLaughlin & Marcus,* 607 A.2d 142, 146, (N.J. 1992).
17. [6, (quoting *Corti v. Flescher,* 417 N.E.2d 764, 769 (Ill. App. 1981))].
18. J. Walter Sinclair and Richard J. Worst, Enforceability of Non-competition Clauses Affecting Lawyers, 62 *Defense Counsel Journal, 58, 60,* p. 60 (1995).
19. *Cohen v. Lord, Day and Lord,* 550 N.E.2d 410 (N.Y. 1989).
20. California has its own code for attorneys although the section governing restrictive covenants is basically the same [14, p. 163, n. 18].
21. American Bar Association's Model Rules of Professional Conduct, Rule 5.6 [14]. Pennsylvania has adopted this rule and uses the same numbering system.
22. Charles E. Cantu and Jared Woodfill, V, Upon Leaving a Firm: Tell the Truth or Hide the Ball, 39 *Villanova Law Review, 773, 797,* p. 797 (1994).
23. *Haight, Brown & Bonesteel v. Fitzgerald,* 285 Cal. Rptr. 845 (Ct. App. 1991).
24. "By refusing to interpret the applicable Rule of Professional Conduct 'in such a narrow fashion,' the California Court of Appeals all but rendered [the Rule] impotent . . . After Haight, a law firm employer could include a forfeiture clause that would discourage even the noblest of attorneys" [22, p. 801].
25. *Howard v. Babcock,* 863 P.2d 150, 151 (Cal. 1993).
26. *Hyman Companies v. Brozost,* 964 F. Supp. 168 (E.D. Pa. 1997) (mem. op.).
27. See, e.g., *Rector-Phillips-Morse, Inc. v. Vroman,* 489 S.W.2d 1 (1973).
28. [26, at 174 (quoting [29, at 1255]. *SI Handling Systems, Inc. v. Heisley,* 753 F.2d 1244, 1255 (3d Cir. 1985))].
29. *SI Handling Systems, Inc. v. Heisley,* 753 F.2d 1244, 1256 (3d Cir. 1985).
30. An attorney's skill and expertise is more properly his/her own trade secret.
31. Obviously, information that readily can be defined as trade secrets is excluded from this problem.

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