

FROM NONCOMPETES TO NONSOLICITATIONS: THE JUDICIAL ONSLAUGHT CONTINUES

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As North Carolina courts whittled away at the enforceability of noncompetition agreements attorneys advised clients to rely more on nonsolicitation agreements, which generally were not subject to the same restrictions. As the battlefield has shifted to nonsolicitations however, the NC Court of Appeals has likewise begun imposing anti-employer restrictions there as well.

Here are three recent cases imposing new judicial restrictions on nonsolicitation agreements:

1. Medical Staffing v. Ridgway, et al. (NCA 1/6/09).

Nurse staffing agency's contractual prohibition of solicitation of employees and clients of the agency "and any parent, division, subsidiary, affiliate, predecessor, successor or assignee" of the agency was overbroad and unenforceable since it also restricted former Raleigh branch manager from soliciting employees and clients of divisions and affiliates of the agency engaged in businesses other than nurse staffing. (However, agency's trade secrets claim against former manager was still enforceable.)

2. Hejl v. Hood Hargett & Associates, Inc. (NCA 4/7/09).

Insurance agency's nonsolicitation contract prohibited former agents from offering insurance services to "any person, firm or entity to whom [agent] has sold any product or service, or *quoted* any product or service." Held: Nonsolicitation provision was overbroad and unenforceable. Agency's attempt to prevent former agent from obtaining clients where agency had failed to do so, "is an impermissible restraint" on the former agent. (Note: \$500 for a post-hiring agreement held to be valid consideration supporting the agreement.)

3. MJM Investigations, Inc. v. Sjostedt, et al. (NCA 7/20/10).

Plaintiff insurance claim investigations agency hired defendant as a contract consultant. The consulting agreement contained noncompete and nonsolicitation provisions. Defendant quit and competed and solicited. Trial court struck noncompete as overbroad, but enforced nonsolicitation. Appeals court struck nonsolicitation as well stating that prohibition on soliciting "current or prospect clients" of plaintiff was vague as to time (i.e. "current" as of when?) and both "client" and "prospect" were undefined, and thus nonsolicitation was unenforceable. Trial court's efforts to determine the identity of clients was impermissible "blue penciling." (Note: Court applied noncompete standards to nonsolicitation provisions without any distinction.)

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