Memo

To:

From: Chris McHam

Date:

Re: Covenants not to compete in Arkansas

My research into Arkansas law regarding covenants not to compete shows that Arkansas follows the majority rule, just as Texas does. Essentially this means that covenants not to compete are not held in high esteem by the courts, especially when they are in employment contracts.

The party wishing to challenge the validity of the clause must show that it is unreasonable and contrary to public policy. Each case is examined individually and strict scrutiny is applied to employment cases.

The elements of an enforceable CNTC are:

1. Covenantee must have a valid interest to protect (generally a trade secret, special training, customer lists and then only if it is found that the employee was able to use this info for an unfair advantage)

2. The geographical restriction must not be overly broad.

3. A reasonable time limit must be set. (can't say in perpetuity.)

In this case I believe the clearest argument lies in the wording of the last sentence of page 5. The pertinent part states

> *"Employee shall not directly or indirectly, enter into or engage generally in direct competition with the Employer…on behalf of any hospital with which Employee has had business dealings on behalf of Employer…"*

This clause is ridiculously broad. It essentially means that any Hospital that the employee has ever contacted regarding a business matter, not matter how insignificant, and regardless of whether that Hospital ever became a customer of the employer is off limits to employee for 3 years. There are NO geographic limitations. It can be assumed that there are a finite number of hospitals in Texas and that all of these potential clients could come across employee's desk for some reason, whether it be as clients or as attempts at sales. Employee is banned from doing business with them, potentially employee is banned from practicing her trade in the state of Texas and possibly the entire United States. That by definition is overbroad.

Chris McHam