

Gavel to Gavel: Limit set on non-solicitation provisions

By: Philip D. Hixon Guest Columnist May 30, 2018



Philip D. Hixon

The Oklahoma Court of Civil Appeals issued an opinion in February interpreting the Oklahoma statute that governs non-compete and non-solicitation contract provisions.

These types of provisions, which are commonplace employment agreements, are intended to mitigate disruption to the employer's business associated with an employee whose relationship with the employer has ended, whether voluntarily or involuntarily. Such provisions are, and have been, subject to reasonable limitations. The court's opinion in *Autry v. Acosta Inc.* potentially places additional limits on the scope of non-solicitation provisions in employment agreements.

The plaintiff, Carrie Autry, sued her former employer, Acosta Inc., for interfering with her current employment. In response, the employer counterclaimed against Autry, alleging a breach of certain provisions in her employment agreement with Acosta.

The employment agreement contained a non-compete provision prohibiting Autry from performing similar work for another employer. A non-solicitation provision prohibited her from directly or indirectly engaging in the business of selling, soliciting, or promoting the sale of the clients that Autry represented while employed by Acosta. A confidentiality provision prohibited her from misappropriating or using Acosta's proprietary business information.

The District Court entered a temporary injunction directing Autry to cease soliciting Acosta's employees, sharing any information she obtained from her former employer, and directly soliciting clients identified on Acosta's then-current client list.

The Court of Civil Appeals reversed the temporary injunction, finding the non-solicitation provision was void and, thus, unenforceable against Autry. The court determined that the language in Autry's non-solicitation provision was overly broad, because, contrary to the statutory language, it prohibited indirect solicitation and was not limited to established customers. The court defined "established customer" as a business or customer wherein a relationship was ongoing and anticipated to continue into the future. The overly broad language in Autry's agreement potentially reached clients who, although they may have been one-time clients, no longer had a business relationship with Acosta.

Steps to take include:

- Identify all written employment agreements (and employment agreement templates) containing non-solicitation provisions.
- Evaluate the language in the non-solicitation provisions against the applicable statutory language as recently interpreted by the *Autry v. Acosta Inc.* opinion.
- Engage counsel to develop an action plan to revise or amend, as appropriate, nonconforming non-solicitation provisions to bring the language into compliance with *Autry v. Acosta Inc.*

Philip D. Hixon is an attorney in GableGotwals' health care practice group.

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