Trade Secrets & Noncompete Blog
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The First Illinois Appellate Court Decision To Address Fifield's "Two Years Of Employment/Consideration Rule" Strictly Adheres To It

Readers of this blog know that in the summer of 2013, long held beliefs about the required consideration for a restrictive covenant under Illinois law were thrown a curve when the Illinois Appellate Court for the First District (*i.e.*, Cook County) held in *Fifield v. Premier Dealer Services, Inc.*, 2013 IL App (1st) 120327, that, absent other consideration, two years of employment is required for a restrictive covenant to be deemed supported by adequate consideration—even where the employee signed the restrictive covenant as a condition to his employment offer and even where the employee voluntarily resigned.

Since then, two Federal district judges in Chicago split over whether to follow *Fifield* and the Illinois Supreme Court chose not to weigh in. Now, the first Illinois appellate court to address *Fifield* has done so – and it strictly adhered to it.

In *Prairie Rheumatology Associates, S.C. v. Maria Francis, D.O.*, 2014 IL App (3d) 140338, Dr. Francis entered into an employment agreement with a two year post-employment non-compete. She tendered her resignation after 15 months of employment and resigned after 19 months of employment. When her former employer Prairie Rheumatology Associates ("PRA") sought to enjoin her from competing in violation of her non-compete, Dr. Francis challenged the enforceability of her non-compete, arguing that it was not supported by adequate consideration because she was not employed for 24 months after entering in to it.

The Illinois Appellate Court for the Third District agreed, holding that because Dr. Francis was not employed for 24 months after entering into the non-compete, and because Dr. Francis "received little or no additional benefit from PRA in exchange for her agreement not to compete," it was not supported by adequate consideration.

In an effort to show that Dr. Francis had received consideration in addition to the 19 months of employment, PRA argued that Dr. Francis had "received PRA's assistance in obtaining hospital membership and staff privileges, access to previously unknown referral sources and opportunities for expedited advancement." However, the Appellate Court found "that PRA failed to assist Dr. Francis in obtaining her hospital credentials and neglected to introduce Dr. Francis to referral sources." Additionally, the Appellate Court found that PRA did not provide access to previously unknown referral sources, and that purported "expedited advancement and partnership opportunities" were "illusory" because "[e]ven though the employment agreement provided that PRA would consider Dr. Francis for partnership after 18 months, there was no guarantee she would become a partner and make shareholder."

Accordingly, the Appellate Court held that PRA failed to provide adequate consideration and the non-compete was unenforceable.

We will continue to monitor developments regarding *Fifield*. In the meantime, Illinois employers hoping to enforce restrictive covenants within two years after the signing date should be prepared to distinguish *Fifield* factually or legally.

Tags: Fifield, Illinois, Maria Francis, Non-Compete Agreements, Prairie Rheumatology Associates

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