# Drafting Noncompetition Agreements for Statutory Compliance:

## Exceptions that Prove the Rule

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The Louisiana Noncompetition Statute, its several amendments and its many judicial interpretations have been a frequent subject of attention by lawyers and judges. Based on that statute, it is generally invalid in principle to enter into a contract that restrains the lawful practice of a trade or profession.[1] Yet, the Legislature has created a number of express exceptions to that rule, including one that allows employers to contractually limit competition by former employees upon termination.[2] The importance of these exceptions was emphasized as recently as 2010 when the Legislature amended Sec. 921.A.(1) to add a reference to the exceptions.

Given the frequent attention to the area, the purpose of this article is to provide the Louisiana practitioner with an analysis of the current status of the Louisiana noncompetition statute and the case law interpreting it. The following includes a summary of state appellate court decisions since the legislative revisions of 2003.

The best practice tips below are also intended to provide guidance to practitioners drafting and interpreting such agreements. As is shown, courts may require strict compliance with the statutory language.[3]

## A Brief History of the Louisiana Noncompete[4]

Louisiana prohibited noncompetition agreements in the employment context until 1962.[5] The law was amended by Act 104 in 1962 to create an exception "where the employer incurs an expense in the training of the employee or incurs an expense in the advertisement of the business that the employer is engaged in."[6] In 1989, the Legislature revised the statute by adding most of the language that remains today. The revision included Section 921.A.(1) of Louisiana Revised Statutes Title 23, which provides a broad prohibition.

> A.(1) Every contract or agreement, or provision thereof, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, except as provided in this Section, shall be null and void. However, every contract or agreement, or provision thereof, which meets the exceptions as provided in this Section, shall be enforceable.[7]

However, subsection C allows noncompetition agreements in employment contexts within narrowly prescribed boundaries:

> C. Any person, including a corporation and the individual shareholders of such corporation, who is employed as an agent, servant, or employee may agree with his employer to refrain from carrying on or engaging in a business similar to that of the employer and/or from soliciting customers of the employer within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein, not to exceed a period of two years from termination of employment. An independent contractor, whose work is performed pursuant to a written contract, may enter into an agreement to refrain from carrying on or engaging in a business similar to the business of the person with whom the independent contractor has contracted, on the same basis as if the independent contractor were an employee, for a period not to exceed two years from the date of the last work performed under the written contract.

In 2003, the Legislature acted in response to the Louisiana Supreme Court holding of *SWAT 24 Shreveport Bossier v. Bond.* In *SWAT 24*, the court interpreted the statutory language "carrying on or engaging in a business" to mean the exception allowing for noncompetition agreements applied only to ex-employees who created their own businesses after termination, not those employees who subsequently worked for a separate, established business. The court acknowledged the phrase was susceptible to more than one meaning.[8] In response to that opinion, the Legislature then amended the statute to clarify that the exception covered both employees who started their own businesses and employees who went to work for another company:

> D. For the purposes of Subsections B and C, a person who becomes employed by a competing business, regardless of whether or not that person is an owner or equity interest holder of that competing business, may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing.[9]

The Legislature thereby provided employers the basis to enter into broader noncompetition agreements.

Still, courts almost universally begin opinions with a statement that public policy in Louisiana disfavors these agreements.[10] The stated justification for this public policy is the need to protect a working person from a contractual inability to support himself, and avoid the consequence that an ex-employee could "[become] a public burden."[11] Therefore, the agreements are often strictly construed.[12]

Moreover, courts are generally reluctant to reform an invalid clause or agreement because:

> [r]eformation of an otherwise invalid noncompetition clause would run counter to the requirement of strict and narrow construction, would allow ambiguous noncompetition agreements and would place courts in the business of either saving or writing a contract that is not generally favored in the law.[13]

## Best Practice Tip 1: Limit the agreement to *parishes* where the employer *does business*

**► Limit the number of parishes specified**

Failure to adequately or appropriately limit the geographic scope of the prohibition can invalidate a noncompetition agreement. Section 921.C. states that for a noncompetition or nonsolicitation agreement to be valid, it must apply "within a specified parish or parishes, municipality or municipalities, or parts thereof, so long as the employer carries on a like business therein." Where an agreement does not "specify" a parish or municipality, it will generally be held invalid.[14] In *Action Revenue Recovery v. eBusiness Group,* a contract was held invalid based on language stating the restriction applied "to all parishes or counties ARR/FAC covers or a like business in said parishes or counties."[15] Because the contract did not contain a specific geographic limitation, it was unenforceable.[16]

Citing the general rule disfavoring noncompetition agreements without specific compliance with an exception, jurisprudence has interpreted Section 921 to create a requirement of limitation for employers. Where an agreement restricted the president of an onshore/offshore drilling equipment company from doing business in all 64 Louisiana parishes, Texas, Mississippi, Alabama and Florida, the court in *H.B. Rentals v. Bledsoe* found a clause naming all of these areas overbroad. The court held the employer had not designated any geographic limitation.[17] Along with an overbroad restriction against soliciting "potential customers," the court held the absence of the geographic limitation failed to meet the statutory requirements.[18]

Therefore, in drafting, employers should conservatively prohibit competition only in the specific parishes where they do business, and name those parishes.

**► List only parishes where the employer actually conducts business**

Moreover, courts have strictly construed the clause allowing employers to restrict competition in specific parishes "so long as the employer carries on a like business therein."[19] In *CBD Docusource, Inc. v. Franks,* a noncompetition agreement specified 29 Louisiana parishes, but the court found the company did not conduct business in at least 10 of them.[20] As there was no severability clause, and the geographical limitation was overbroad, the agreement was held null and void.[21]

**► List parishes or municipalities in their entirety, or with specific geographic boundaries of the employer's business at the time of contracting**

Because the statute allows employers to limit competition in a "parish or parishes, municipality or municipalities, or parts thereof," not specifying a specific parish or "part thereof" can be problematic. In *Garcia v. Banfield Pet Hospital*, a veterinarian contracted with his clinic not to compete "within a six mile (6) radius of either of the [clinic's two] places [of] business" for two years following the termination of his employment.[22] The Louisiana 1st Circuit Court of Appeal held the agreement invalid on the basis that the employee had no way of knowing at the time of execution where the clinics would be located in the future.[23] The court reasoned:

> Tying the non-competition agreement to circumstances existing at a future date creates a situation where [the employee] had no way to properly determine the limits of the non-competition agreement at the time the agreement was confected.[24]

**► Do not include catch-alls or additional states**

Geographic limitations that name specific parishes or municipalities can be rendered unenforceable by the addition of catch-all phrases or additional unrelated states added in an ad hoc manner at the end of a list. In one case, an employer's addition of Texas and Mississippi to the end of an otherwise valid list of parishes was deemed in violation of the statute.[25] However, because the agreement included a valid severability clause, the court reformed the clause and held the agreement valid. There was a denial of an injunction on unrelated grounds. In another case, an employer's addition of "as well as the rest of the Parishes within the State of Louisiana" after a list of 15 specific parishes, without the inclusion of a severability clause, rendered its noncompetition agreement invalid.[26]

## Best Practice Tip 2: Begin the term of prohibition upon the termination of employment

A noncompetition clause in Louisiana should include a valid time limit. Section 921.C. states that noncompetition agreements are "not to exceed a period of two years from termination of employment."[27]

**► Limit to two years from the termination of employment**

Section 921 mandates the period cannot exceed two years *from termination of employment.* In *Allied Bruce Terminix Cos. v. Ferrier*, the court held a noncompetition provision null and void where it sought to limit competition for two years following the "date of a final judgment in its favor."[28]

**► Limit from the termination of employment of the contracting employee**

In addition, the time limit should apply to the termination of the *contracting* employee. The Louisiana 5th Circuit Court of Appeal held that where an employee contracted that he would not solicit a company's ex-employees "until such person has terminated his employment with the Company for a period of eighteen months," the clause referred to the termination date of ex-employees rather than the contracting employee, and thus exceeded the statutory time limit of two years.[29] In conjunction with its holding, the court noted that while nonsolicitation of fellow employees is "not specifically covered by the Louisiana noncompetition statute, by analogy to the law interpreting that statute, and under general contract rules, the provision is against public policy as it is written."[30] This holding can be contrasted with *Smith, Barney, Harris Upham & Co. v. Robinson*, where failure to specify the date from which a one-year prohibition on soliciting other employees was not fatal because it was clear from the context of the agreement that the date intended was the termination of the contracting employee.[31]

## Best Practice Tip 3: Include a severability clause

Importantly, the inclusion of a severability clause in a noncompetition agreement can be the difference between an unenforceable phrase or provision and an agreement that is invalid. Where an agreement contains a severability clause, the courts may sever a non-conforming phrase or clause and allow the remainder of the agreement to survive.[32]

A court may decline to reform an agreement that does not have a severability clause. In *CBD Docusource*, the Louisiana 5th Circuit Court of Appeal recognized that Section 921 itself includes a severability clause.[33] However, it interpreted the law, in the context of public policy, to allow for nullification of a noncompetition clause within a larger agreement, because of the severability provision, but not reformation of a noncompetition agreement itself without a specific severability clause.[34]

Citing to different statutory authority, the employer in *J&S Resources, LLC,* argued for reformation despite the absence of a severability clause based on La. Civ.C. art. 2034, which provides: "Nullity of a provision does not render the whole contract null unless, from the nature of the provision or the intention of the parties, it can be presumed that the contract would not have been made without the null provision."[35] However, the court was not persuaded. It noted that in *SWAT 24*, "the supreme court clearly indicated that without a severability clause it would not have approved of the lower court's decision to allow reformation of the contract."[36] The court cited to *CBD Docusource* in rejecting the employer's argument that reformation is permitted by statutory provision because noncompetition contracts are disfavored under the law.[37]

## Best Practice Tip 4: Be aware of noncompetition clauses in related agreements

Following the expansion of rights by the Legislature in 2003, *Green Clinic LLC v. Finley* held that a valid noncompetition agreement could be formed by incorporating noncompetition language from a separate agreement.[38] The Louisiana 2nd Circuit Court of Appeal concluded that a physician, James S. Finley, was bound by noncompetition language contained in a limited liability company's operating agreement even though he was no longer a member of the company and had not signed the most recent version of its operating agreement.

The controversy arose when Dr. Finley informed the clinic in 2009 that he was leaving to work for a competitor.[39] Though he had been a member of the limited liability company when it was formed, in September 2003, Dr. Finley transferred his membership interest to his own closely held corporation.[40] The court's holding was based on a reference in the doctor's assignment agreement, which stated he would be bound by the conditions of the company's operating agreement.[41] The court found that based on such language of incorporation, Dr. Finley was bound by the noncompetition clause in the separate agreement despite the corporate shield.[42]

The physician argued that the last version of the operating agreement he signed as an individual was executed in February 2003.[43] Thus, in his view, the Louisiana Supreme Court's decision in *SWAT 24 Shreveport Bossier v. Bond* controlled, not the 2003 statutory revisions. The court noted that "the law in effect on February 25, 2003, would allow Dr. Finley to leave [the clinic] and to become an employed physician at a competing clinic without breaching the noncompete clause . . . ."[44] However, the court held that the controlling agreement was the transfer of interest, which Dr. Finley signed on Sept. 1, 2003. Therefore, the legislative revisions that defined "carrying on" or "engaging" as working for a competitor, which became effective Aug. 15, 2003, thereby bound Dr. Finley to the noncompete terms.[45]

Dr. Finley's argument failed because he entered into the transfer of the interest after the statutory revisions of 2003 became effective. Because the 2003 statutory revisions have been held to be prospective only,[46] noncompetition agreements signed before Aug. 15, 2003, may need to be reviewed and possibly re-executed.

## Best Practice Tip 5: Proofread agreements carefully

Courts will strictly construe noncompetition agreements against the party attempting to enforce them. Careful drafting is essential to the creation of an enforceable agreement. If both parties participate in the drafting, it can be helpful to include that statement within the agreement.

### ► Avoid overbroad or ambiguous terms or clauses

A common pitfall in the drafting of noncompetition agreements is a phrase or term that can be interpreted as overbroad. In *H.B. Rentals*, the Louisiana 3rd Circuit Court of Appeal held that an employer's attempt to prohibit solicitation of "potential customers" was overbroad, and therefore unenforceable: "We cannot discern whether this refers to customers of H.B. at the time of the agreement, at the time Bledsoe left H.B.'s employ, or at any time present or future."[47] Coupled with an overbroad (and, therefore, stricken) geographic limitation clause, the phrase rendered the agreement null and void.[48]

A court also may find agreements void where language is unclear or ambiguous. In *USI Services*, the Louisiana 5th Circuit Court of Appeal found that a nonsolicitation clause that began with elements related to noncompetition was unenforceable because it ambiguously combined the concepts.[49] The contract should be clear enough for the average employee to understand the terms to which he is agreeing.

### ► Beware of drafting errors

Because public policy disfavors noncompetition agreements, drafting errors may be an impediment to enforcement. In *USI Services*, the court found a nonsolicitation clause invalid because it was ambiguous due to a drafting error.[50] Though the rest of the clause clearly stated that the agreement meant to restrict client solicitation for two years *after* termination of employment, one sentence read "within 24 months *preceding* . . . the date of termination."[51] The court found the clause ambiguous and declined to enforce it.[52]

### Best Practice Tip 6: Define the scope of the company's business fairly as to the services of the employee

The revised Section 921 allows for a noncompetition agreement between "similar businesses."

Where an employer's definition of the scope of business is seen as overbroad, the contract may be held unenforceable. In *LaFourche Speech & Language Services v. Juckett*, the Louisiana 1st Circuit Court of Appeal held an agreement invalid where the company's business was not described in the contract, and the scope of business in its petition for enforcement was overbroad.[53] The employer stated it was a "rehabilitation agency providing therapy services in the field of speech pathology, vocational rehabilitation, occupational therapy, physical therapy, and social work services."[54] The court found this would preclude the employee from practicing her profession in many areas, even though she had only been hired as a speech therapist.[55]

However, in *Ticheli v. John H. Carter Co.*, a more recent opinion, the Louisiana 2nd Circuit Court of Appeal held importantly that Section 921 does not require "a specific definition of the employer's business" in a noncompetition agreement.[56] It found that where the scope of the ex-employer's auto parts company was not defined, a competing business that sold parts from a different manufacturer was similar enough to enforce the noncompetition agreement.[57]

### Best Practice Tip 7: Special rules for automobile salespeople, real estate brokers and lawyers

Unique provisions apply to noncompetition agreements with automobile salespeople, real estate brokers and lawyers.

Noncompetition agreements between employers and automobile salespeople are no longer permitted in Louisiana. In 2006, the Legislature revised the statute to provide special protections for automobile salespeople. La. R.S. 23:921.I. provides that "there shall be no contract or agreement or provision entered into by an automobile salesman and his employer restraining him from selling automobiles." However, in *Hixson Autoplex of Alexandria, Inc. v. Lewis*, the court held that a noncompetition agreement between a dealership and an automobile salesman executed in 2005 was valid because the 2006 revisions did not apply retroactively.[58] Thus, contracts signed by automobile salespeople before Aug. 15, 2006, may be valid and enforceable.

In 2005, other provisions were added to the revised statutes for noncompetition agreements between real estate brokers and licensees. With respect to contracts signed after Jan. 1, 2006, real estate brokers must be given "the right to rescind the non-compete agreement until midnight of the third business day following the execution of the non-compete agreement or the delivery of the agreement to the licensee, whichever is later [and] the non-compete agreement shall be prominently displayed in bold-faced block lettering of not less than ten-point type."[59]

Finally, lawyers are restricted by the Louisiana Rules of Professional Conduct as to noncompetition agreements by attorneys. Rule 5.6(a) provides:

> A lawyer shall not participate in offering or making 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.[60]

### Best Practice Tip 8: Follow up with your clients

As the law and events change, review agreements with clients on a periodic basis to maintain enforceable and effective noncompetition agreements.

In addition, be aware that clients might be using ready-made noncompetition forms that do not adequately protect their interests. This may have been the case in *Heart's Desire v. Edwards*, where a company brought an unsuccessful suit against four former employees to enforce noncompetition agreements.[61] Of the contracts the employer could produce, two contained geographic scope clauses with blanks, and one had been filled in by hand with the term "Region 8."[62] The court held the agreements invalid.[63]

## Conclusion

Though the Legislature has expanded the validity of noncompetition agreements in specific circumstances, courts may require strict statutory compliance. A limited, clear and reasonable agreement that precisely complies with the statutory requirements of Section 921.C. is an employer's best course for creating an enforceable agreement. Careful drafting is essential, as we can expect important interpretive case law to continue.

## FOOTNOTES

1. La. R.S. 23:921.A.(1) (2010).
2. *Id.* at (C).
3. Garcia v. Banfield Pet Hosp., Inc., 2009, p. 5 (La. App. 1 Cir. 1/21/10), 35 So.3d 261, 264.
4. Historically, courts in Louisiana have made no distinction between noncompetition and nonsolicitation clauses when interpreting La. R.S. 23:921. USI Ins. Serv. v. Tappel, 09-149 (La. App. 5 Cir. 11/10/09), 28 So.3d 419.
5. La. R.S. 23:921. *See also,* Nalco Chem. Co. v. Hall, 347 F.2d 90 (5 Cir. 1965).
6. Nalco Chem. Co. v. Hall, 347 F.2d 90, 91 (5 Cir. 1965).
7. La. R.S. 23:921.A.(1) was amended by 2010 La. Act 164 to add the last sentence of the provision.
8. SWAT 24 Shreveport Bossier, Inc. v. Bond, 2000-C-1695, p. 12 (La. 6/29/01), 808 So.2d 294, 302-03.
9. La. R.S. 23:921.D.
10. *See,* Garcia, 35 So.3d at 264; Cellular One, Inc. v. Boyd, 94-CA-1783, 94-CA-1784, p. 4 (La. App. 1 Cir. 3/3/95), 653 So.2d 30, 32 ("consistently had a strong public policy against"); Water Processing Techs., Inc. v. Ridgeway, 618 So.2d 533, 535 (La. Ct. App. 1993) ("consistently... found to be against public policy").
11. Bell v. Rimkus Consulting Group, Inc. of La., 07-CA-996, p. 5 (La. App. 5 Cir. 3/25/08), 983 So.2d 927, 930.
12. Courts in Louisiana have made no distinction between noncompetition and nonsolicitation clauses. USI Ins. Servs., LLC v. Tappel, 09, p. 7 (La. App. 5 Cir. 11/10/09), 28 So.3d 419, 424.
13. Heart's Desire, LLC v. Edwards, 46,222 (La. App. 2 Cir. 4/27/11), 2011 WL 1630175.
14. Compare two decisions from the Louisiana 3rd Circuit Court of Appeal: Petroleum Helicopters, Inc. v. Untereker, 731 So.2d 965, 968 (La. App. 3 Cir. 1999) (holding a noncompetition agreement was valid where it prohibited employees from "carrying on or engaging in a similar business,... within the parishes in which [the employer] carries on a like business"); and Allied Bruce Terminex

Co., Inc. v. Guillory, 649 So.2d 652, 653 (La. App. 3 Cir. 1994) (holding a noncompetition agreement valid that prohibited competition in "those parishes in which [the employee] has worked for [the employer] during the term of the agreement.")

15. Action Revenue Recovery, L.L.C. v. eBusiness Group, L.L.C., 44, 607-CA, p. 6 (La. App. 2 Cir. 8/19/09), 17 So.3d 999, 1003.

16. *Id. See also,* Bell, 983 So.2d at 927 (holding that geographic limitations using definitions from the U.S. Department of Commerce, rather than parishes or municipalities, does not comply with the statute and renders a noncompete agreement invalid).

17. H.B. Rentals, LC v. Bledsoe, 2009, p. 6 (La. App. 3 Cir. 11/4/09), 24 So.3d 260, 263.

18. *Id.*

19. La. R.S. 23:921(C).

20. CBD Docusource, Inc. v. Franks, 06-CA-167, p. 5 (La. App. 5 Cir. 6/28/06), 934 So.2d 307, 309.

21. *Id.* at 311. *Importantly, compare* Class Action Claim Servs., L.L.C. v. Clark, 04-CA-591, p. 8-9 (La. App. 5 Cir. 12/14/04), 892 So.2d 595, 600 (holding that an employer who was not operating in 20 of the 23 specified parishes could not enforce the entire noncompete, *but could sever the noncompetition agreement in accordance with its severability clause* and enforce the agreement in the three parishes where the employee actually was doing business. The court stated: "Our review of the jurisprudence indicates that when a non-compete clause is overbroad in its geographical boundaries, the Court should delete the overbroad portions and enforce the remainder of the geographic restriction provision.").

22. 35 So.3d at 265.

23. *Id.*

24. *Id*. *See also,* Medivision, Inc. v. Germer, 92-CA-1755 (La. App. 4 Cir. 6/4/93), 617 So.2d 69, 72 (holding a noncompetition contract that limited the geographic scope to "within ten miles of any office of the Center" failed to specify the proscribed areas because it failed to list parishes or municipalities or adequately define "office of the Center"; thus, the agreement was held invalid).

25. *Id. See also,* Arthur J. Gallagher Risk Mgmt. Servs., Inc. v. Todd, 10-41 (La. App. 3 Cir. 6/2/10), 2010 WL 2179753 at *2-3.

26. J&S Res., LLC v. R-4, LLC, 10-1524 (La. App. 3 Cir. 5/4/11), 63 So.3d 393, 394.

27. La. R.S. 23:921.C. *See also,* USI Ins. Servs., LLC v. Tappel, 09-CA-149 (La. App. 5 Cir. 11/10/09), 28 So.3d 419, 421 (holding a noncompetition and nonsolicitation clause void in its entirety because it contained a five-year prohibition).

28. 634 So.2d 44.

29. Bell, 8 So.3d 64.

30. *Id* at 69.

31. Smith, Barney, Harris Upham & Co. v. Robinson, 12 F.3d 515, 520 (5 Cir. 1994).

32. *See,* Todd, 2010 WL 2179753 at *3 (severing geographic regions that did not conform to state law, and holding the agreement otherwise valid). *See also,* SWAT 24, 808 So.2d at 309. Cf. Class Action Claim Services, 892 So.2d at 595, upholding part of a noncompete provision due to a severability clause.

33. 934 So.2d at 310-311. Some jurisprudence has interpreted "provision thereof" in La. R.S. 23:921.A.1. to be a built-in severability clause: "Every contract or agreement, *or provision thereof,* by which anyone is restrained from exercising a lawful profession, trade or business of any kind, except as provided in this Section, shall be null and void." *See*, *in particular*, two decisions of the 3rd Circuit, Henderson Implement Co., Inc. v. Langley, 97-1197 (La. App. 3 Cir. 2/4/98), 707 So.2d 482, 486; and Moore's Pump and Supply, Inc. v. Laneaux, 98-1049 (La. App. 3 Cir. 2/3/99), 727 So.2d 695.

34. *Id.*

35. 63 So.3d at 394.

36. *Id.* at 395.

37. *Id.* at 395-396. *Compare the decision* in AMCOM of Louisiana, Inc. v. Battson, 28,171 (La. App. 2 Cir. 1/5/96), 666 So.2d 1227, *rev.* 96-0319 (La. 3/29/96), 670 So.2d 1223. In that case, the 2nd Circuit struck down as invalid a noncompete which covered two parishes, Caddo and Bossier, but also included an additional geographic limit of a 75-mile radius. After the 2nd Circuit struck down that noncompete, the Louisiana Supreme Court granted cert and, without an opinion, reversed the appellate court's ruling and reinstated the trial court's judgment for injunctive relief by striking the 75-mile provision of the noncompete and leaving in place the two-parish restriction. However, later in Summit Institute v. Prouty, the 2nd Circuit distinguished the AMCOM decision by concluding that, in AMCOM, the employee could clearly understand the difference between two parishes and 75 miles; whereas, in Summit, the employee could be confused and, therefore, the noncompete was invalid.

38. Green Clinic, L.L.C. v. Finley, 45,140-CA, 45,141-CA (La. App. 2 Cir. 1/27/10), 30 So.3d 1094.

39. *Id.* at 1096.

40. *Id.*

41. *Id.*

42. *Id.* at 1098-99.

43. *Id.* at 1096.

44. *Id.* at 1098.

45. *Id.*

46. *See,* Sola Communications, Inc. v. Bailey, CA 2003-905 (La. App. 3 Cir. 12/10/03), 861 So.2d 822, 828. *See also,* Choice Prof'l Overnight Copy Serv., Inc. v. Galeas, 2011-CA-0034 (La. App. 4 Cir. 5/25/11), 66 So.3d 1216.

47. 24 So.3d at 263.

48. *Id.*

49. 28 So.3d at 419. The court stated: "We find clause 7.1 to be too ambiguous to support USI's burden of proof. This clause is contradictory as well as ambiguous. It appears to combine elements of a non-compete clause in the first part with non-solicitation prohibitions in the remainder of the clause. Further, we find the length of the prohibition ambiguous."

50. *Id.* at 425.

51. *Id*.

52. *Id.*

53. LaFourche Speech & Language Servs., Inc. v. Juckett, 94-CA-1809 (La. App. 1 Cir. 3/3/95), 652 So.2d 679, 681.

54. *Id.* at 680.

55. *Id.* at 681. *See also,* Daiquiri's III on Bourbon, Ltd. v. Wandfluh, 608 So.2d 222, 224-25 (La. Ct. App. 1992), for comparison (holding a noncompete agreement null and void due to its overbroad description of employer's business which prohibited employee from selling "frozen drinks for consumption by the general public.").

56. Ticheli v. John H. Carter Co., 43,551-CA, p. 3 (La. App. 2 Cir. 9/17/08), 996 So.2d 437, 440.

57. *Id*. *See also,* Baton Rouge Computer Sales, Inc. v. Miller-Conrad, 99-CA-1200 (La. App. 1 Cir. 5/23/00), 767 So.2d 763 (holding the contract validly restricted the sale of computers because there could be no confusion on the part of the employee about the restricted activity; even the name of the business clearly defined its scope).

58. Hixson Autoplex of Alexandria, Inc. v. Lewis, 2008-1142 (La. App. 3 Cir. 4/1/09), 6 So.3d 423.

59. La. R.S. 37:1448.1.

60. The ABA Annotated Rules of Professional Conduct are informative as to the qualification of "retirement."

61. 2011 WL 1630175 at *1.

62. *Id*. at *3-5.

63. *Id*.

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