



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

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Good News for Lawyers: Non-Competes Can Be Enforced in Virginia -- or Completely Invalidated

George Doumar enforced a non-compete clause in a preliminary injunction proceeding in Fairfax County where the applicable non-compete addressed primarily confidentiality of documents and non-solicitation of company customers. Previously, George Doumar persuaded the same court to invalidate a non-compete clause that prohibited employment that competed "in any way" with the prior employer. This latter approach, invalidating a clause completely based on its being overbroad, seems to be the prevailing rule in Virginia, especially after the Virginia Supreme Court's decision in Modern Environments v. Stinnett, 561 S.E. 2d 694 (Va. 2002), which seemed to endorse this approach. Other states may "blue-pencil" such a clause, that is, invalidate the clause only to the extent the clause is unenforceable. Tactically, many employers are tempted to draft very broad clauses, believing such provisions will be limited or scaled back by a court if overbroad, whereas companies sensitive to Virginia and other similar courts may draft such

clauses narrowly to ensure a higher chance they are upheld.

Not Reading the Employee Handbook Is Probably No Excuse, So It Can Help to Have One

George Doumar updated an employee handbook from 1981, which contained outdated and factually inaccurate information. The old manual contained specific provisions on the percentage of social security taxes, and other such matters, which were obsolete. George updated the manual in a way designed to minimize the need for ongoing updates while keeping the manual accurate, for example by referring to tax withholding in accordance with "applicable law" rather than a specific percentage. George Doumar helped to draft another employee manual for a D.C. employee after an ex-employee had claimed that she had a long-term commitment in a circumstance where nothing was in writing. Employee manuals generally contain multiple warnings that employment is on an "at will" basis and that an employee can be fired at any time, with or without cause. Employees may not read the documents but the manuals can still generally be used as

evidence that the employee knew he could be fired in any wrongful termination suit as long as the employee was provided a copy.

Terminated employees may seek unemployment compensation, and may seek redress if terminated on grounds that are against public policy, for example based on race or sex. Federal civil rights statutes typically provide that an employee must exhaust administrative procedures before filing a court action, while state law, such as in Virginia's use of so-called Bowman claims, may restrict the rights of employees to bring suit.

Employee handbooks can be beneficial to an employer in defending, and avoiding claims. Also, such handbooks may be required in certain contexts, such as for government contractors or employers in certain industries. Although the employee does not read the handbook, most lawyers try to obtain and review a copy before representing an employee.

If It's Not Registered, You Still Can't Necessarily Copy It

Several clients have inquired about situations where trade names are purportedly being infringed, but one client thought there was no protection because the name was not registered with the federal patent and trademark office. The law provides protection to people who use and build up value in a name. Remedies may be limited, but companies generally can obtain some relief to prevent infringement. Similarly, one client was waiting for patent approval before trying to sell its new product. Do not necessarily wait to

start your business until you have obtained trademark, or for that matter patent, approval. Use of a trade name or product will usually give the owner some protection, and the mere filing of a patent application ensures that you are at least first in line. You need to take steps to protect your property rights, but you need to make money, too. By the time a person obtains formal approval for registration of intellectual property rights, particularly for small businesses and in the technology field, the product might well be obsolete or other competitors may well have entered the market with similar products.

Don't Do The Crime If You Want To Stay

George Doumar represented a foreign national with a visa from an international organization who was charged with a felony for leaving a child in a car alone while she performed an errand. Although the case could have been pled to a misdemeanor, any conviction relating to child neglect can now potentially result in deportation of persons who may otherwise be legally in the United States. Eventually, George Doumar filed a motion to dismiss the charges on constitutional grounds, arguing that the defendant could not be charged with a felony and detained, based on a ticket, but should have been brought before a judicial officer to be charged. The court granted the motion to dismiss; the prosecution could have re-filed the case but did not. If in the United States on a work visa, a wide variety of what may seem to be non-serious charges can potentially result in deportation, or at least the threat thereof.

Just Mailing The Papers Overseas Probably Won't Work

Lots of companies like to sue in the Eastern District of Virginia because of its fast docket. But when the defendant is overseas, serious issues of obtaining service and personal jurisdiction over defendants can hobble the ability to pursue an action. Just mailing a copy of the lawsuit to Cameroon does not work. Translations of initial court papers into foreign languages under international treaty is usually required. Onerous service requirements can add months and thousands of dollars to the cost and time of bringing suit.