

Spring 1993

Broadcast Managers and the No-Compete Clause

Michael L. Hilt

University of Nebraska at Omaha, mhilt@unomaha.edu

Follow this and additional works at: <https://digitalcommons.unomaha.edu/commfacpub>

 Part of the [Communication Commons](#)

Recommended Citation

Hilt, Michael L., "Broadcast Managers and the No-Compete Clause" (1993). *Communication Faculty Publications*. 40.
<https://digitalcommons.unomaha.edu/commfacpub/40>

This Article is brought to you for free and open access by the School of Communication at DigitalCommons@UNO. It has been accepted for inclusion in Communication Faculty Publications by an authorized administrator of DigitalCommons@UNO. For more information, please contact unodigitalcommons@unomaha.edu.



throughout the semester. Normally, the final grades are awarded according to these criteria:

1. Formal or written evaluation of the student intern by his/her agency supervisor.
2. Informal (i.e., information gathered during on-site visits or telephone conversations) evaluation of the student intern by his/her agency supervisor.
3. Formal or written student's self-evaluation.
4. Informal (i.e., information obtained during the semester from meetings or contacts with interns) evaluation of the student by the faculty coordinator.
5. Evaluation of the "daily log," kept by the student for the duration of the internship.
6. Evaluation of the intern's activities portfolio (i.e., printed articles, news releases, brochures, audio or video productions).

Grading

At Purdue University Calumet, final grades for internship are based on the standard A, B, C, D, F scale. Final grades are determined by the faculty internship coordinator and are based upon the criteria outlined above, under "Performance Assessment."

Conclusion

Internship programs conducted and designed carefully offer students an added opportunity to sharpen their skills, refine their expectations, and plan their future goals more realistically. A successful internship program is based upon a well organized, clearly defined, and carefully monitored procedure that focuses on its meaningful benefits to the students, the sponsoring organization, and the university. Establishing and maintaining a

successful internship program is, indeed, more than simply placing a student with an agency. It requires a strong commitment from everyone involved -- the faculty coordinator, the students, the sponsoring organizations, the department, and the university.

Note: The author will be happy to send additional information upon request. Address Yahya R. Kamalipour, Communication and Creative Arts Department, Purdue University Calumet, Hammond, IN 46323-2094.

Reference

Gross, L. S. (1981). *The Internship Experience*. Belmont, CA: Wadsworth.

Broadcast Managers and the No-Compete Clause

Michael L. Hilt

University of Nebraska at Omaha

The no-competes clause has become an expected part of a broadcast news employee's contract. Covenants not to compete are contract provisions in which the employee agrees not to engage in a trade or business competing with the employer (Carter, 1992). The covenant not to compete is of particular interest to both the station and the employee (*Emory Law Journal*, 1982). These covenants attempt to limit the employee from performing specific duties in competition with a former employer for a specific period of time, in a specific geographic area.

The validity of covenants not to compete is uncertain. Some

states prohibit covenants entirely. The majority of states enforce covenants not to compete if they are reasonable in duration, geography and duties. Those guidelines are vague and subject to judicial interpretation. Since only a handful of cases involving broadcasters and covenants not to compete have been reported, judges have little to go on in this area. They often end up drawing on cases from other fields that may be unrelated to broadcasting (Carter, 1992).

Courts take into account the employer's need to have his business protected, the hardship the employee will endure if restricted, and the harm to the public interest in having the covenant enforced (Carter). Judges evaluate the reasonableness of the no-competes clause in terms of duration, geography and scope of duties (*Montana Law Review*, 1988).

Two Douglas County Nebraska district judges recently faced the issue of deciding the validity of the no-competes clause. During 1992 two Omaha, Nebraska television stations engaged in a court battle with the no-competes clause as the central issue.

A Recent Example

Chief Meteorologist Jim Flowers and Sports Director John Knicely left television station KETV after their contracts had expired in the spring of 1992. Their contracts with KETV included a covenant not to compete at a station within a radius of seventy miles for twelve months following the expiration or termination of employment. Both Flowers and Knicely signed contracts with competing Omaha station WOWT.

Both judges, in separate decisions, found that the Pulitzer-owned KETV had not met its burden of proof to show that the restrictions were reasonable. In the

case of Flowers, Judge James Buckley ruled that the plaintiff "has not shown that defendant's services were so special and unique" to make it necessary for KETV to be protected. Buckley called the covenant overly broad in its geographical scope and length of time. Knically went from sports director and anchor at KETV to news anchor on Chronicle-owned WOWT 5 p.m. and 10 p.m. newscasts. Judge John Hartigan, Junior said that Pulitzer failed to establish that Knically's services were unique, requiring that KETV be protected through injunctive relief. Hartigan also ruled that the covenant was definitionally and geographically over-inclusive for its stated purpose.

The experience of broadcast employers who go to court to enforce no-compete clauses is mixed. Often broadcast general managers and news directors are caught between the wishes of the stations' owners, and the desires of the news employees.

The purpose of this study is to determine whether broadcast managers believe the courts should enforce the no-compete clause when it is part of a contract.

Method

General managers and news directors at commercial radio and television stations across the United States were selected as a stratified random sample (Babbie, 1989) using the 1992 *Broadcasting & Cable Market Place*. In the first stage, the 209 television markets and 262 radio markets were each divided into four groups based on size. Then, 26 markets were randomly selected within each of these subgroups. In the second stage, individual radio and television general managers and news directors were randomly selected to represent each of the markets. The sample represented roughly equal numbers of general

Table 1.
Broadcast Managers and the No-Compete Clause

Statement: "The courts should enforce no-compete clauses in contracts."

	Strongly		Disagree	Neutral	Agree	Strongly	
	Mean	Disagree				Agree	Agree
Overall							
GMs(67)	3.15	6(9%)	14(21%)	19(28%)	20(30%)	8(12%)	
NDs(81)	2.84	10(12%)	21(26%)	29(36%)	14(17%)	7(8%)	
N=148	2.98	16(11%)	35(24%)	48(32%)	34(23%)	5(10%)	
Television							
GMs(36)	3.22	2(5%)	7(20%)	11(31%)	13(36%)	3(8%)	
NDs(41)	3.17	3(7%)	9(22%)	14(34%)	8(20%)	7(17%)	
N=77	3.19	5(6.5%)	16(21%)	25(32.5%)	21(27%)	10(13%)	
Radio							
GMs(31)	3.06	4(13%)	7(23%)	8(26%)	7(23%)	5(16%)	
NDs(40)	2.50	7(17.5%)	9(30%)	15(37.5%)	6(15%)	0(0%)	
N=71	2.75	11(16%)	16(27%)	23(32%)	13(18%)	5(7%)	

managers and news directors for comparative purposes.

A total of 416 management-level employees were identified for the survey mailing list. The survey followed an exploratory two-state census in 1990 and a random national survey in 1991 using similar methodologies. The survey was self-administered. The Total Design Method for mail surveys was used (Dillman, 1979). Personalized cover-letters, survey booklets and business reply envelopes were sent. The first wave of surveys was mailed in October 1992. This was followed by a second mailing of the survey to non-respondents in early November. A third wave of surveys was mailed to non-respondents in early December.

The overall response rate was 36.3 percent (N=151). The 1992

response rate was slightly below the response rate for the two previous surveys, but typical for such surveys (Wimmer & Dominick, 1991, p. 123).

Results

Overall, broadcast general managers and news directors were split on whether the courts should enforce no-compete clauses in contracts.

More general managers agree/strongly agree with the statement than disagree. The mean response was only slightly on the agree side of neutral (3.15). The largest response group among news directors was neutral, although collapsing the disagree/strongly disagree responses gave it an edge. The mean response for news directors was slightly on the disagree side of neutral (2.84).

There was not a statistically significant difference between the two occupational groups.

The mean television responses fell on the agree side of neutral (3.19), while mean radio responses were on the disagree side of neutral (2.75). The mean responses of television general managers and news directors were similar (3.22/3.17).

Radio news directors were in strongest disagreement with the statement (2.50). Discussion

The mixed responses indicate that broadcast general managers and news directors are apparently as undecided about the validity of no-compete clauses in contracts as are the courts. While one might have assumed general managers to clearly agree with the statement, "The courts should enforce no-compete clauses in contracts" because of the protection it seems to give their station. But this was not the case. More general managers did agree than disagree with the statement, but the margin was not great. More news directors are neutral or disagree with the statement than agree.

Separating the respondents into the two broadcast categories -- television and radio -- did not erase the indecision. Television respondents, as one might have assumed to have a greater need for the protection a no-compete clause offers, only slightly agree with the statement. Radio respondents slightly disagree with the statement.

Of the four subgroups -- television general managers, television news directors, radio general managers and radio news directors -- only radio news directors disagree with the statement. The mean for this subgroup fell between disagree and neutral. The indecision on the part of broadcast managers may give some explanation as to why there have been relatively few lawsuits involving the no-compete clause. The managers may hesitate to bring

suit if they question the validity of such a clause, or if they anticipate a negative response from the courts. In fact, few suits involving the clause reach the courts.

There are obvious limitations to this study. The response rate (36.3 percent) is approximately that anticipated for such a mail survey: it is modest. It would be helpful to know whether the respondents, and/or their stations, include a no-compete covenant as part of their contracts. And market size may make a difference in the managers' view of the no-compete clause. Big market stations have more to lose in ratings and advertising dollars than a small market station where turnover may be more expected.

References

Babbie, E.R. (1989). *The practice of social research* (5th ed.). Belmont, CA: Wadsworth.

Broadcasting & cable market place. (1992). New Providence, NJ: R.R. Bowker.

Carter, S. (1992). Broadcasters and non-compete clauses. Paper presented at the Association for Education in Journalism and Mass Communication annual convention, Montreal, Canada, August 1992.

Dillman, D.A. (1979). *Mail and telephone surveys, the total design method*. New York: John Wiley & Sons.

Note, A fresh look: lowering the mortality rate of covenants not to compete ancillary to employment contracts and the sale of business contracts in Georgia, *Emory Law Journal*, 31 (Summer 1982): 636.

Note, The post-employment covenant not to compete: an old dog doing a new trick, *Montana Law Review*, 49 (Summer 1988): 432.

Wimmer, R.D. & Dominick, J.R.

(1991). *Mass media research*. Belmont, CA: Wadsworth.

Two Communications Law Titles

J. Robert Craig
Central Michigan University

Creech, Kenneth C. *Electronic Media Law and Regulation*. Boston: Focal Press, 1993.

Zelezny, John D. *Communications Law: Liberties, Restraints, and the Modern Media*. Belmont, CA: Wadsworth, 1993.

Zelezny, John D. *Cases in Communications Law*. Belmont, CA: Wadsworth, 1993.

These two new titles in the burgeoning communications law field add options for the general communication law course and the more specialized electronic media offering. Zelezny also provides an accompanying casebook featuring excerpts from fifty of the precedent opinions referred to most often in general courses.

Communications Law, in the author's words, is "... designed as a kind of survival kit, in addition to providing a liberal arts perspective on the law." Unlike several other authors producing texts addressing media/communications law, Zelezny's approach seeks not to turn students into lawyers, but rather help them learn to identify and respond to legal problems on the job and determine when an issue is complex enough for an attorney's attention. In general, he succeeds with readable prose free of the plodding rhetoric students often complain of in such textbooks.