

LITIGATION INFORMATION MEMO

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Appellate Division Clarifies the Impact of Financial Disincentives on Attorney Employment Agreements

For the first time since 1998, a New York Appellate Court has addressed the standard governing restrictions placed on attorneys following their separation from a law firm. In a pair of decisions released in November, the Appellate Division Fourth Department held that financial disincentives do not per se violate Rule 5.6 of the New York Rules of Professional Conduct. First, in *Gerber v. Goldberg Segalla LLP*, 199 A.D.3d 1354 (4th Dept. 2021), the petitioners challenged an arbitration award that upheld the respondent law firm's partnership agreement containing a provision extinguishing an equity partner's interest in the firm and preventing a return of capital upon withdrawal. In essence, when a partner left the firm, they received nothing. In upholding the arbitration award, the Fourth Department held such an agreement did not violate public policy nor did it demonstrate a manifest disregard of the law.

Next, in *William Mattar, P.C. v. Hall*, 199 A.D.3d 1416 (4th Dept. 2021), the respondent attorney challenged the enforceability of an employment agreement providing a formula for the division of any contingency fee awards on cases the attorney took with him after leaving the petitioner law firm. Specifically, respondent contended such an agreement amounted to a forfeiture for competition in violation of rule 5.6 of the New York Rules of Professional Conduct. Initially, the Fourth Department acknowledged that agreements involving financial disincentives are not per se illegal. It is only where such financial disincentives are significant and impose an impermissible restriction on the practice of law that they violate Rule 5.6. There, however, the financial disincentive created by the division of contingency fee awards did not have the effect of improperly deterring competition. As a result, the attorney's employment agreement was enforceable, and the Fourth Department determined the lower court erred in deviating from the formula set forth in that agreement.

The Fourth Department's focus on the effect of financial disincentives, as opposed to the facial appearance of forfeiture for competition, provides much needed clarity as to when a partnership agreement or other type of employment agreement involving attorneys violates Rule 5.6 of the New York rules of professional conduct. Accordingly, attorneys are free to enter into agreements containing financial disincentives so long as such disincentives do not impose a restriction on the practice of law.

If you have any questions about the information presented here, please contact [Kevin Cope](#), any attorney in Bond's [Litigation practice](#) or the attorney at the firm with whom you are regularly in contact.

