THEODORE ROOSEVELT INN OF COURT

PROGRAM DATE: JANUARY 28, 2026

AT MEYER,SUOZZI ENGLISH & KLEIN, P.C.
990 Stewart Avenue, Suite 300
Garden City, NY 11530

A SURVEY OF THE STATE OF THE LAW: RESTRICTIVE COVENANTS, NON-COMPETES, CONFIDENTIALITY AND "BUSINESS PROTECTION" AGREEMENTS

PRESENTERS:

CHAIRS:

RICHARD EISENBERG & KEVIN SCHLOSSER

MEMBERS:

JASPREET MAYALL

MEREDITH BERGER

HOFSTRA LAW STUDENTS:

ROSA FERNANDEZ

SARAH KOPYTO

MICHAEL PENA

THEODORE ROOSEVELT INN OF COURT

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"UPDATE ON NON-COMPETE AND RELATED ISSUES"

AGENDA

TIME	TOPIC	PRESENTERS
30 min.	Introduction: The Basic Concepts: Non-Compete/Non-Disclosure/Non-Solicit	Eisenberg/Schlosser
10 min.	Federal Trade Commission/Attempted Regulation	Rosa Fernandez
15 min.	Relevant Case Law-Non-Competes	Michael Pena
10 min.	NYS Proposed Legislation	Sarah Kopyto
20 min.	Mock Argument-Request for TRO to Enforce a Non-Compete	
	Judge:	Kevin Schlosser
	Plaintiff's Attorney:	Meredith Berger
	Defendant's Attorney:	Jaspreet Mayall
20 min.	Question and Answer Period	All Participants
5 min.	Closing Comments	Richard Eisenberg

Total Time: 1 hour and 50 minutes – 2 CLE credits for attendees.

THEODORE ROOSEVELT

INN OF COURT PROGRAM

JANUARY 28, 2026

Non-Competes and Related Agreements

a.k.a "Business Protection Agreements"

I. The agreements defined:

A. Non-Competes

1. In employment context

2. In the M & A context

3. Equitable and legal remedies

4. Doctrine of severability

5. The policy arguments for and against. Efforts to restrict non-competes (details to follow)

B. Non-Disclosure Agreements

1. "Trade Secrets" defined-The Restatement of Torts, the Uniform Trade Secret Act and the Defend Trade Secrets Act. "Financial, business, scientific, technical or engineering information that derives independent economic value from not being generally known and which requires 'reasonable measures' to keep it secret." See also Ashland Management Inc. v. Janien, 82 NY2d 395 (1993), Verizon New York v. NYS Public Service Commission, 137 AD3d 66 (2016).

2. " Confidential Information." A category greater than the classic trade secret.

3. Enforceability separate from any existing non-compete.

4. The policy argument for the sufficiency of the non-disclosure obligation.

C. Non-Solicitation Agreements

1. The scope of the obligations—active pursuit vs. acceptance of third-party proposals.

2. Non-solicitation of former accounts.

3. Non-solicitation of former co-workers.

D. Enforcement Matters

1. Injunctive relief/damages/attorneys' fees. No requirement of election of remedies.

2. The enforcement of these rights in the context of agreements generally governed by arbitration.

3. CPLR Article 75 proceedings separate from demands for injunctive relief.

4. The Defend Trade Secrets Act (DTSA). 18 U.S.C. Section 1836. Establishes a private civil right of action in the Federal courts.

5. The Computer Fraud and Abuse Act (CFAA). 18 U.S.C. Section 1030. Prohibits unauthorized access to "government, financial and internet-connected" computer systems. Criminal penalties and a private civil right of action in the Federal courts for economic damages.

E. These restrictions in the context of the "Gig Economy."

1. What portion of an independent contractor's work product becomes the client's "trade secret?"

2. Is non-solicitation relevant in hiring a consultant?

F. The sufficiency of consideration for these agreements.

1. The employment relationship.

2. The "Garden Leave" provision.

3. The "Trapped at Work Act" ("Stay or Pay"). Recapture of expenses by employer upon breach of promise to remain for a specified period of employment.

From Regulation to Litigation

The FTC's Pivot to Targeted Non-Compete Enforcement

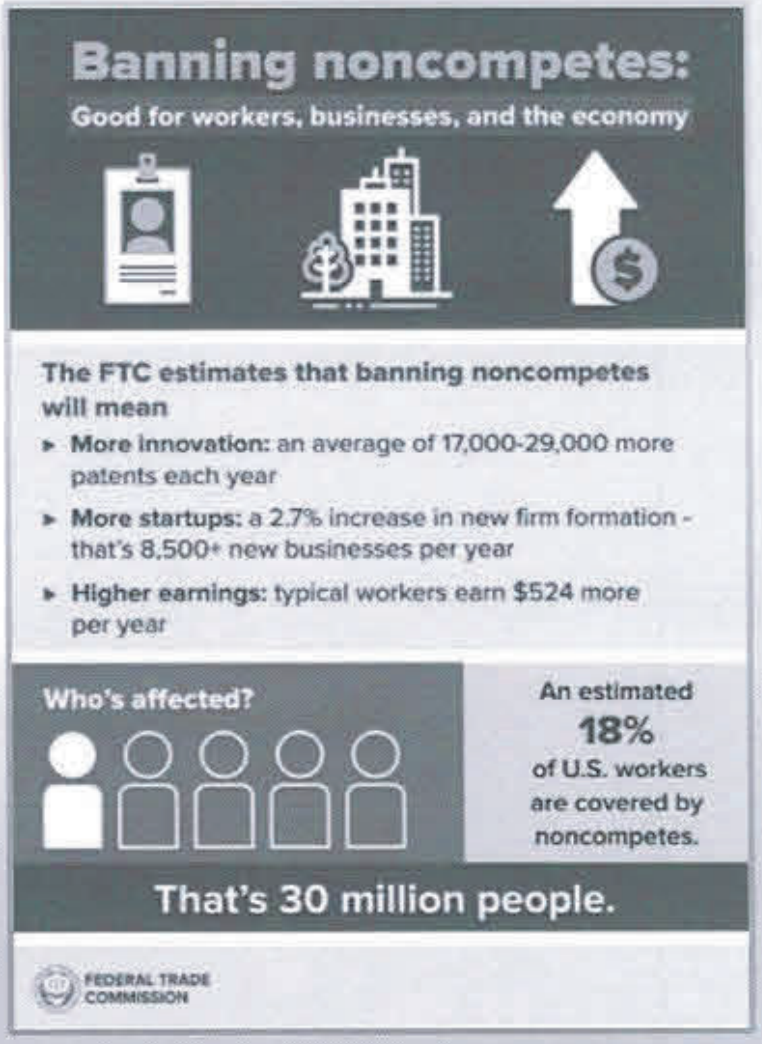
The Theodore Roosevelt American Inn of Court

Brief History of the FTC and Non-Competes

- For most of it's existence (1914), the FTC stayed out of the non-compete arena.
- The Biden Administration issued Executive Order 14036 on July 19, 2021 promoting competition.
- Section 5(g) of EO 14036 empowers the FTC to restrict non-compete agreements
- In 2023 – FTC filed 3 cases against:
  - Prudential Security, Inc.
  - O-I Glass, Inc.
  - Ardagh Group S.A.

Nationwide Ban

- April 23, 2024: FTC issued a final rule to promote competition by banning non-competes nationwide.
- Final Rule: Commission had determined that many businesses were partaking in an unfair method of competition, in violation of Section 5 of the FTC Act.



The "Death" of the Nationwide Ban

- August 2024: *Ryan LLC v. Federal Trade Commission* in the Northern District of Texas struck down the ban.
- Issue:
  - (1) Whether the FTC Act granted the Commission the power to create substantive rules regarding unfair methods of competition or is its power limited to procedural rules.
  - (2) Whether the FTC could justify such a broad, sweeping, one-size-fits-all ban.
- Holding:
  - Court held that Section 6(g) of the FTC Act is only allows the Commission to make rules about its own internal procedure but not authority to write substantive laws that invalidate millions of private contracts.
  - Courts found that the ban was unreasonably overbroad.

2025 - Present

- Sept 2025: The FTC officially ended it's legal defense of the nationwide ban.
- No broad rule
- FTC is focusing on litigation rather than a sweeping ban.
- Acting in parallel with a massive wave of 2025 state laws.

Best Practices & Key Takeaways

- Not the end of an era:
  - FTC is looking for unreasonable or exploitative agreements to use as examples in court.
- Low-wage Red Flag:
  - Non-competes applied to an hourly or low-wage worker is now a high-risk target for federal enforcement.
- Alternatives Firsts:
  - Move toward tailored NonoDisclosure Agreements (NDAs) and Non-Solicitation clauses – viewed as less restrictive ways to protect business interests.

Overview and current status of New York case law on the enforcement of noncompete agreements

By: Michael Pena

The Reasonableness Test in New York State

- New York courts apply a three part test established in BDO Seidman v. Hirshberg to assess the enforceability of employment non compete agreements.
- A restraint on employee competition is considered reasonable if it : 1. Is no greater than is required for the protection of the legitimate interest of the employer, 2. Does not impose undue hardship on the employee, and 3. Is not injurious to the public. (*BDO Seidman v. Hirshberg*, 712 N.E.2d 1220 (1999)).

Reasonableness test continued

- Under BDO Seidman and following decisions, New York courts will enforce a restrictive covenant to the extent necessary to protect an employer's relationships and goodwill and to the extent necessary to prevent the disclosure, use of trade secrets or confidential information.
- As noted in a 2024, a Second Department, Appellate Division case, the court noted "an employer's interests justifying a restrictive covenant are limited to the protection against misappropriation of the employer's trade secrets or of confidential customer lists, or protection from competition by a former employee whose services are unique or extraordinary." (*Power-Flo Technologies, Inc. v. Crisp*, 213 A.D.3d 1070 (2024)).

Recent Appellate Developments

- In Twitchell Technical Products, LLC v. Mechoshade Systems, LLC (2024), the court noted a covenant is not necessarily unenforceable merely because it lacks a temporal limitation and a covenant not to compete is not necessarily unenforceable merely because it lacks a geographic restriction. (*Twitchell Tech. Prods., LLC v. Mechoshade Sys., LLC*, 227 A.D.3d 45 (2024)). (Second Department).
- Davis v. Marshall & Sterling, Inc. reaffirmed New York has adopted a common-law standard of reasonableness in determining the validity of employee agreements restricting an individual's right to work or compete. Additionally the court noted the manner of an employee's termination is not relevant to the issue of the enforceability of the agreements.
- In this case there was a dispute on how the plaintiff left his prior employment. One side alleges that they were fired without cause and the other side said they resigned. Because plaintiffs do not assert that the defendant denied them access to any post employment benefits that they are entitled to receive, the court focused only on the reasonableness analysis and not the true cause of the plaintiff's termination. (*Davis v. Marshall & Sterling, Inc.*, 217 A.D.3d 1073 (2023)). (Third Department).

Recent Appellate Developments Continued

- The Second Department in Keneally, Lynch & Bak v. Salvi applied a more lenient standard to covenants relating to business sales, stating that "covenants not to compete which relate to the sale of a business and its accompanying good will may be enforced when they are reasonable in scope and duration, do not unreasonably burden the promisor, and do not harm the general public." (*Keneally, Lynch & Bak, LLP v. Salvi*, 190 A.D.3d 961 (2021)).
- This case involved the purchase of an attorney's existing law practice, and the court found the covenant's scope and duration reasonable.
- The covenant not to competent prohibited the defendant from practicing law within a 15-mile radius of the North Sea office for a period of 5 years.
- In this case, the non compete agreement was deemed enforceable by the court because it was the sale of a business (a law firm) and that is one of the exceptions to non compete agreements.

Recent Appellate Developments Continued

- In James J. Loughlin Jr. v. Moshin Y. Meghju (2020), the Second Department reverses a lower court ruling stating the plaintiff did not breach the non compete agreement.
- The court also noted, "since a noncompetition agreement is intended to protect the good will of a business upon its sale, where, as here, there is no evidence that the business's goodwill has been impaired, a finding that the noncompetition agreement has been breached is incongruous." (*Loughlin v. Meghji*, 186 A.D.3d 1633, 2020)).

Protection of Customer Relationships

- Courts recognize that employers have legitimate interests in preventing former employees from exploiting customer relationships developed using employer resources. In Perella Weinberg Partners LLC v. Kramer, the First Department held in 2024 that an employer has a legitimate interest in enforcing a personal non solicitation covenant if its employee has cultivated or develop personal relationships with clients through the use of the employer's resources. (*Perella Weinberg Partners LLC v. Kramer*, 230 A.D.3d 451 (2024)).

Recent Case Law Developments

- A recent development in 2025 demonstrates judicial attitudes toward what constitutes protectable employer interests.
- In Japanese Medical Care PLLC v. Tamba (2025), the First Department found a noncompete clause in a nurse practitioner's employment unenforceable, reasoning that nurse practitioner services, though indispensable, were not, by themselves, unique or extraordinary such that their general restriction against providing such services for any competition for two years following termination protected legitimate interest of medical care business. (*Japanese Med. Care PLLC* v. *Tamba*, 241 A.D.3d 1104 (2025)).
- Courts at time will give wider latitude to covenants between members of a learned profession because their services are unique or extraordinary.

Case Law Developments Continued

- Conversely, Gaon Wellness Acupuncture Physical Therapy and Chiropractic P.L.L.C v. Jiae (2025), demonstrates courts' willingness to consider partial enforcement. (*Gaon Wellness Acupuncture Physical Therapy & Chiropractic P.L.L.C. v. Jiae*, 235 A.D.3d 491 (2025)). (First Department).
- The First Department reversed a summary judgment dismissal, holding that even when a noncompete covenant may be overboard, there is no rule that automatically invalidates overbroad employment agreements not to compete, and partial enforcement remains available when employers demonstrate good faith efforts to protect legitimate interests.
- Similarly, in Photonics Indus. Int'l v. Xiaojie Zhao, the Second Department held in 2020 that restrictive covenants may be partially enforced to the extent necessary to protect a company's legitimate interests. (*Photonic Indus. Int'l, Inc. v. Xiaojie Zhao*, 185 A.D.3d 1064 (2020)).
- When courts strike certain parts of or certain words in a non compete agreement that is called blue penciling.

Case Law Developments Continued

- Decided just this year, the First Department vacated an injunction granted by the Supreme Court because the non compete covenant is overly broad and unenforceable.
- Some provisions in the agreement included "the employee was prohibited from transacting business with any construction firm in the New York metropolitan area for a period of three years after his termination was overbroad." (*Silver Lining Interiors, Inc. v. Arencibia*, N.Y. App. Div. Jan. 13. 2026)).

THANK YOU!!

NON-COMPETE AGREEMENTS NYS LEGISLATION

Sarah Kopyto

History

- New York Labor Law Section 202-k ("Broadcast Employees Freedom to Work Act) currently bans noncompete agreements for certain broadcast industry employees
- In 2023, Bill A1278B/S3100A sought to ban nearly **all** employee noncompete agreements with New York employees
- Ultimately vetoed by Governor Kathy Hochul.
- Governor Hochul indicated her willingness to sign a narrower bill in the future, especially for those making below the median wage in New York

Newest Legislation

- Senate Bill S4641A
- Passed the New York State Senate on June 9, 2025
- Referred to Assembly Labor Committee for review
- Given that 2023 bill passed, it is widely thought to pass.
- What is less certain is whether Governor Hochul will sign it into law...

Covered Agreements

- "Any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer."

Excluded Agreements

- Agreements that:
  a) establish a fixed term of service and/or exclusivity during employment;
  b) prohibit disclosure of trade secrets;
  c) prohibit disclosure of confidential and proprietary client information; or
  d) prohibit solicitation of clients of the employer.

Sale of Business Exception

- Agreements made in the sale of the goodwill of a business
- Agreements made in the sale or disposition of a majority ownership interest in a business
- Applies when the sale is by:
  - *A partner of a partnership*
  - *A member of a limited liability company*
  - *Any person or entity owning **15% or more** of a business*

Permissible Non-Compete Agreements Requirements

- Must not contain a term of restriction greater than one year,
- Must provide for the payment of salary during the period of enforcement of the non-compete agreement, and
- Meets all requirements for determining enforceability under the common law of New York

Covered Employees

- Covered Individual
  - *Anyone that "performs or has performed work or services for another person on such terms and conditions that they are ... in a position of economic dependence on, and under an obligation to perform duties for, that other person,"* **except**
    - Highly Compensated Individuals - those earing $500,000 or more per year.

Covered Employees

- Health Related Professional
  - *Licensed under New York's Education Law*
  - *physicians, physician assistants, chiropractors, dentists, perfusionists, veterinarians, physical therapists, pharmacists, nurses, podiatrists, optometrists, psychologists, occupational therapists, speech pathologists, audiologists, and mental health practitioners*

Mandatory Notice Requirement

- Requires every employers to inform their employees of their protections and rights under this section by posting a notice to be developed by the Department of Labor
- The notice must be posted
  - *conspicuously in easily accessible*
  - *well-lighted places*
  - *customarily frequented by employees and applicants for employment.*

Choice of Law Restrictions

- Prohibits choice-of-law/choice-of-venue provisions that "have the effect of avoiding or limiting" the non-compete ban
- Applies to covered individuals who lived or were employed in New York ≥30 days before employment ended
- Includes individuals who worked remotely in another state but
  - *They reported to a New York worksite or office or*
  - *They reported to a New York-based supervisor.*

Private Right of Action

- Covered individual may bring a civil action
- Action must be brought within **two years** of when:
  - The non-compete agreement was signed
  - The individual learned of the non-compete agreement
  - When the employment or contractual relationship is terminated, or
  - When the employer takes steps to enforce the non-compete

Private Right of Action

- Court has jurisdiction to:
  - Void the non-compete agreement at issue
  - *Order all appropriate relief, including*
    - Enjoining conduct of any entity;
    - Ordering payment of **up to $10,000** in damages per covered individual or health-related professional; and
    - Awarding lost compensation, compensatory damages, and reasonable attorneys' fees

No Retroactive Effect

- Only applicable to non-compete agreements entered into, or modified on or after the effective date (likely 2026)
  - *30 days after the Governor signs the law.*
- Lawful non-compete agreements currently in place before the effective date of the Bill will remain enforceable,
  - *as long as they meet the obligations of New York common law.*

References

- N.Y. S. 4641A, 2025–2026 Leg., Reg. Sess. (N.Y. 2025), https://www.nysenate.gov/legislation/bills/2025/S4641/amendment/A.
- Duane Morris LLP, *New York Considers Broad Legislation Limiting Noncompete Agreements* (Sept. 23, 2025), https://www.duanemorris.com/alerts/new_york_considers_broad_legislation_limiting_noncompete_agreements_0925.html.
- *New York Legislature Proposes New Bill Banning Non-Compete Agreements*, LAB. & EMP. L. BLOG (Mar. 2025), https://www.laboremploymentlawblog.com/2025/03/articles/employment-agreements/new-york-legislature-proposes-new-bill-banning-non-compete-agreements/.
- Jackson Lewis P.C., *NY's Non-Compete Bill: What Employers Can Expect from a Newly Proposed Ban*, https://www.jacksonlewis.com/insights/nys-non-compete-bill-what-employers-can-expect-newly-proposed-ban.
- Noncompete Agreements, N.Y. ST. OFF. OF THE ATT'Y GEN., https://ag.ny.gov/resources/individuals/workers-rights/noncompete-agreements.

A SURVEY OF THE STATE OF THE LAW:
RESTRICTIVE COVENANTS, NON-COMPETES,
CONFIDENTIALITY AND "BUSINESS PROTECTION" AGREEMENTS

Chairs: Richard Eisenberg and Kevin Schlosser

Theodore Roosevelt Inn of Court
January 28, 2026 Presentation

Restrictive Covenants/Noncompete/ "Business Protection Provisions" Vignette

Fact Pattern: The Case of the Co-Founder's Covenant

The Parties and the Business

Alex Reed is a co-founder and the lead salesperson for two highly successful technology companies, Apex Solutions, LLC and Zenith Tech, LLC. Along with his three partners (actually LLC members)—Ben Carter, Clara Davis, and David Evans—Reed claims to have grown the companies from the ground up. Leveraging his extensive prior experience in sales, Reed claims he was solely responsible for generating revenue, building the combined annual sales to over $22 million. For his efforts, he received an annual salary and a percentage of the gross profits.

The relationship between the four members is governed by detailed Operating Agreements for each company. All parties, including Reed, actively participated in negotiating and drafting these agreements with the assistance of their own independent legal counsel.

The Non-Compete or "Business Protection Provision"

Section 4.5 of each Operating Agreement, titled "Conflicts of Interest," contains what the companies and their members refer to as a "Business Protection Provision". This provision was mutually agreed upon to protect the members' collective investment in the companies and their time, money and efforts in growing the businesses. It stipulates that for a period of two full years following a member's dissociation from the companies, that member is forbidden from:

- Entering "into business opportunities (whether as an investor, employee, director, consultant, lender or otherwise, directly or indirectly) with a direct competitor of the

[Companies]". The agreements list "Innovate Corp" and "Global Dynamics" as examples of direct competitors.

- Engaging with the companies' primary supplier and business partner, Orion Systems, an original equipment manufacturer, to act as outside distributor or the like in any region of the world.

The Dispute

Over the years, Reed grew frustrated with what he perceived as a lack of effort from his partners and a lack of transparency in the companies' financial operations . After his proposals to be bought out or to buy out his partners were rebuffed, Reed invoked a forced-sale provision in the Operating Agreements. This gave the other members the option to either buy his shares or sell their shares to him at a price he set. The other members rejected and contested Reed's notice and other efforts to force a sale or purchase.

The other members learned that Reed had been secretly attempting to sell the companies, providing confidential company information to outside parties, and setting up plans to compete against the companies, including recruiting their salespersons to join him elsewhere.

Each Operating Agreement also contained provisions for removing or "dissociating" members and the grounds therefor.

Days before the deadline to respond to Reed's forced-sale notice, the other three members voted to "dissociate" him as a member. The dissociation notice cited and relied upon the grounds specified in the Operating Agreements—that Reed was "performing [his] duties in a substandard manner and/or [was] so difficult to work with that [he was] negatively affecting the operations of the" companies, and also referenced a "violation of statutory and/or common law duty of loyalty". The next day, they terminated his association with the companies, cut off his compensation for services , and revoked all access to company premises and systems. (They did not seek to deny him the right to continue to share in the companies' profits (if any), as required by the Operating Agreements. The termination notice expressly "reminded" Reed of his obligations under the two-year Business Protection Provision.

The Litigation

Reed filed a lawsuit seeking a preliminary injunction to prevent his former partners and the companies from enforcing the restrictive covenant provisions.

- **Reed's Position**: Reed argues the provision is an unreasonable and overbroad non-compete covenant that is disfavored by law. He claims it imposes an undue hardship by preventing him from earning a living to support his family. He asserts that the provision's lack of any geographic limitation and its prohibition on engaging with competitors "directly or indirectly" in any capacity makes it punitive and unenforceable. He contends the real purpose of his termination and the

enforcement of the covenant was to retaliate against him for exercising his contractual right to trigger the forced-sale provision.

- **The Companies' Position**: The companies and remaining members argue this is not a typical *employee* non-compete but a "Business Protection Provision" negotiated among sophisticated *co-owners* with legal representation. They contend the provision is narrowly tailored and necessary to protect their legitimate interest in preventing Reed from exploiting the companies' confidential information and customer goodwill, which was "created and maintained at the employer's expense". They assert Reed's dissociation was for cause, alleging he acted in a "destructive, self-interested, disloyal and improper manner in breach of his fiduciary duties".
    - Regarding harm, they argue that any financial injury to Reed is not irreparable, as lost wages can be awarded as monetary damages later if he wins his case. They counter his claim of being "destitute" by pointing to his recent cash offer to purchase the other members' interests for $16.5 million.
    - Conversely, they claim the companies would suffer irreparable harm if the injunction were granted, as Reed could exploit customer relationships and confidential information to unfairly compete, causing a loss of goodwill that is impossible to calculate. The balance of equities, they argue, favors enforcing an agreement Reed himself helped create, rather than allowing him to breach his fiduciary duties and harm the business.

MAYER|BROWN

JANUARY 20, 2026

RESTRICTIONS ON "STAY-OR-PAY" PROVISIONS IN US EMPLOYMENT AGREEMENTS GAIN MOMENTUM

AUTHORS: GABRIELLE LEVIN, RUTH ZADIKANY, CASEY MORRISON

New York, California, and other states have recently enacted legislation that curtails or abolishes so-called "stay-or-pay" provisions in employment agreements. "Stay-or-pay" agreements—sometimes referred to as training repayment agreement provisions (TRAPs)—typically require workers to reimburse employers for sign-on bonuses, relocation expenses, education, training, or other payments if their employment terminates before a specific time. This new legislation reflects the broader policy shift in the US toward limiting employment provisions that restrict worker mobility.

NEW YORK TRAPPED AT WORK ACT

On December 19, 2025, New York Governor Kathy Hochul signed the Trapped at Work Act into law, making New York one of the growing number of states to enact legislation combatting "stay-or-pay" clauses in employment agreements.

New York's Trapped at Work Act prohibits employers from requiring, as a condition of employment, that a worker or prospective worker execute an "employment promissory note." The definition of an "employment promissory note" is not limited to a traditional promissory note but rather includes "any instrument, agreement, or contract provision that requires a worker to pay the employer, or the employer's agent or assignee, a sum of money if the worker leaves such employment before the passage of a stated period of time." The Act specifically notes that an employer cannot require a worker to repay money that the employer characterizes as reimbursement for training provided to the worker by the employer or a third party.

"Worker" is broadly defined and includes employees, independent contractors, interns, externs, and volunteers. The Act applies to all employers in New York, regardless of size.

The Trapped at Work Act contains several exceptions, permitting agreements that:

> (a) Require a worker to repay money advanced to the worker by the employer (unless the money was used to pay for training related to the worker's employment with the employer);
>
> (b) Require a worker to pay for property that the employer has sold or leased to the worker;
>
> (c) Require educational personnel to comply with terms or conditions of sabbatical leave; or
>
> (d) Are part of a collective bargaining agreement.

The Trapped at Work Act specifically notes that these "stay-or-pay" agreements are "unconscionable,"

"against public policy," "unenforceable," and "null and void." However, if any such provision is part of a larger employment agreement, the invalidity of a "stay-or-pay" provision will not render unenforceable other portions of the employment agreement.

Enforcement lies with the Labor Commissioner, who may fine employers in violation of the law between $1,000 and $5,000 for each violation. While no affirmative private right of action currently exists under the Trapped at Work Act for workers, a worker who successfully defends against their employer's attempts to enforce a void "stay-or-pay" provision in an employment agreement can recover attorneys' fees.

While the Trapped at Work Act is currently in effect for any agreement signed on or after December 19, 2025, the New York Assembly introduced proposed amendments on January 6, 2026. If enacted as currently proposed, the amendments would postpone the Act's effective date to December 19, 2026; remove independent contractors, interns, externs, and volunteers from coverage under the Act; permit agreements requiring an employee to reimburse an employer for the cost of tuition, fees, and required educational materials for a transferable credential; and give the Labor Commissioner more discretion to set penalties, including consideration of the employer's size, the employer's good faith belief that it was in compliance, the gravity of the violation, and the history of previous violations.

NATIONAL TREND TOWARD RESTRICTING "STAY-OR-PAY" AGREEMENTS

With the passage of the Trapped at Work Act, New York joins numerous states that have recently enacted legislation regarding "stay-or-pay" agreements.

As described in more detail in our November Legal Update, California recently enacted California Assembly Bill (AB) 692 , which took effect on January 1, 2026. AB 692 prohibits employers from including in any employment contract, or requiring a worker to execute as a condition of employment or a work relationship, a contract that mandates payment to the employer upon the worker's separation from employment. AB 692 exempts certain agreements from its scope: (a) loan repayment or forgiveness agreements related to programs provided by government agencies; (b) certain tuition repayment agreements; (c) apprenticeship program repayment agreements for certain programs; (d) contracts awarding retention bonuses not tied to job performance at the outset of employment, subject to certain requirements; and (e) leasing, financing, and purchase-of-land contracts. Even in these limited circumstances, however, employers must meet stringent requirements for such agreements to be enforceable. AB 692 renders void "stay-or-pay" agreements executed on or after January 1, 2026.

Colorado enacted restrictions on employers' use of TRAPs in 2022 and added additional restrictions in 2024. The Colorado law prohibits employers from recovering from workers expenses related to "normal, on-the-job training." Where training expenses are recoverable (i.e., where expenses are "distinct from" normal, on-the-job training), the Colorado law limits the employer's recovery to the "reasonable costs" of the training, which decreases proportionally over the course of two or more years (depending on whether the employer is public or private) based on the number of months that have passed since the training was completed. The law contains a private right of action, allowing any worker to bring a civil action against an employer in violation of the law and recover actual damages, injunctive relief, a penalty of $5,000, reasonable costs, and attorneys' fees. The 2024 amendment permits the Colorado Attorney General to bring an action and recover three times the amount of any employer's recovery or attempted recovery of training costs.

As part of a broader restriction on noncompete agreements, Wyoming permits only prorated recovery of relocation, education, and training costs based on the worker's term of service: up to 100% of costs are recoverable for service of less than two years, 66% are recoverable for service between two and

three years, and 33% are recoverable for service between three and four years. Contracts entered into on or after July 1, 2025 providing for repayment in accordance with this schedule will be enforceable.

Connecticut has prohibited employers with over 25 employees from imposing job-related debt on employees since 1985. Indiana and Pennsylvania have enacted restrictions on "stay-or-pay" agreements specific to the healthcare industry, and the Ohio Senate introduced similar legislation in 2025, which is currently pending in the Senate Committee.

KEY TAKEAWAYS FOR EMPLOYERS

- Review existing employment agreements, offer letters, training agreements, reimbursement agreements, and promissory notes with workers to confirm compliance with current law.
- For New York, California, and other relevant states, employers should revise their form and template agreements to remove any provisions that require an employee to pay the employer a certain sum of money if the worker separates from employment before a specific period of time passes.
- Consider alternative employee retention mechanisms, such as deferred compensation, employee stock options, and retention bonuses.
- Monitor for updates to state legislation in New York and other states where workers are located.

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10 YEARS

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Memberships

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New York State

U.S. Supreme Court

U.S. Court of Appeals for the Second Circuit

U.S. District Court, Eastern and Southern Districts of New York

U.S. District Court, Eastern District of Michigan

U.S. District Court, Eastern District of Wisconsin

Kevin Schlosser is a Shareholder and the Chair of the Litigation & Dispute Resolution Department at Meyer, Suozzi, English & Klein, P.C. located in Garden City, N.Y. Mr. Schlosser has been involved in all aspects of state and federal litigation since starting his legal career in 1984. An experienced civil litigator, Mr. Schlosser has engineered the legal strategy for a broad range of cases and arbitrations, including complex commercial matters, corporate and partnership disputes, business torts, fraud, breach of fiduciary duty, breach of contract, business valuations, employment and restrictive covenants, intellectual property, trademarks, copyrights, unfair competition, false and misleading advertising, trade secrets, professional liability and malpractice claims, construction law and mechanics liens, real estate, commercial landlord-tenant disputes, ERISA, health law, Federal Fair Debt Collection Practices Act class actions, products liability, insurance coverage, claims and defense, including disability insurance claims, and the prosecution and defense of other tort-related claims. His clients consist of some of the largest companies in the world, as well as local businesses and individuals, including senior law partners, accountants, doctors and others in the professions. A proven appellate lawyer, he is also an accomplished trial attorney, whose victories include million-dollar recoveries and a record-breaking jury verdict.

Mr. Schlosser also serves as a private neutral arbitrator and party-appointed arbitrator in complex commercial disputes. He is a member of the Commercial Panel of the National Roster of Arbitrators of the American Arbitration Association, and approved to serve as an arbitrator on any AAA-designated arbitrations. As a panel arbitrator, Mr. Schlosser has presided over arbitrations of a complex international multi-million dollar contractual dispute as well as partnership, shareholder, employment and contractual disputes. Mr. Schlosser also serves as a Mediator, Court-Appointed Referee and as a "Private Judge" pursuant to the CPLR. For more on Meyer Suozzi's roster of Private Judges, **click here**.

In addition to his litigation experience, Mr. Schlosser also acts as general outside corporate counsel, advising corporate clients on the full spectrum of legal affairs. Because of his experience in the Commercial Division of the Supreme Court of the State of New York since its inception, Mr. Schlosser is frequently tapped to serve as local Long Island counsel to many other law firms in New York City and out of state, including in Nassau and Suffolk Counties.

Kevin Schlosser

Notable Experience Includes:

- Won a $12.6 million judgment in a jury trial in the Commercial Division, Nassau County, in a breach of contract case involving a stock purchase agreement
- Won at trial in Commercial Division, New York County, defeating $1.2 million commission claim by Trump Securities
- Appeared as litigation counsel to the National Football League and obtained the immediate vacatur of an injunction through an order of the Appellate Division in Long Island, thereby permitting the NFL to pursue its policy of mandatory drug testing of professional football players
- In a jury trial in the United States District Court for the Eastern District of New York, obtained a verdict entirely rejecting claim for nearly $14 million in alleged lost profits in an international breach of contract case, breaking down plaintiff's financial experts through vigorous cross-examination
- Has appeared as lead counsel in copyright, trademark, Lanham Act, contract and antitrust cases throughout the country, including in United States District Courts in California, Hawaii, Illinois, Michigan, New York, Oklahoma and Wisconsin.
- Successfully defended a $65 million shareholder derivative action alleging breach of fiduciary duties and corporate waste against the former president of a public bank, resulting in the entire action against the president being dismissed with no monetary payment from the president and his counsel fees being reimbursed in their entirety by the bank
- Successfully defended a $25 million action alleging several counts of fraud, breach of contract and business torts against the largest casino operator in the world
- Obtained summary judgment dismissing case and prevailed on appeal to the New York Appellate Division, First Department, and Court of Appeals in an action alleging damages of over $20 million, asserting intentional interference with contract and interference with business relations against largest casino operator in the world
- Prevailed on appeal to the New York Appellate Division, Second Department, to sustain claim of punitive damages in a commercial fraud and breach of fiduciary duty action
- Prevailed in arbitration in dispute between senior law partners concerning the proper method for allocating fees in cases handled by the law firm
- Obtained injunctive relief on behalf of product manufacturer/seller in United States District Court for the Eastern District of New York barring competitors from selling competing, offending product, and prevailed after trial in challenge to the injunction
- Obtained final judgment against large manufacturer's competitor and former employee under restrictive covenants and non-disclosure agreements based upon claims of misappropriation of trade secrets and breach of contract in Commercial Division, Nassau County
- Obtained highest jury award on record for damages in an action for nuisance and interference with real property rights on behalf of property owners in the Supreme Court, Suffolk County
- Obtained jury verdict in Supreme Court, Nassau County, on behalf of international distributor-commercial tenant on the ground of constructive eviction even though tenant continued to remain in the leased premises for lengthy period of time, in which jury awarded tenant significant monetary damages against the landlord and relieved the tenant of any further obligation for rent on remaining lease term after the tenant moved to new space

- Obtained summary judgment and prevailed on appeal to New York Appellate Division, Second Department, and New York Court of Appeals in an action against insurer on behalf of insured manufacturer declaring that insurer must defend underlying false advertising and Lanham Act claims pending in federal district court
- Obtained favorable resolution of several actions arising from partnership dispute and sale of real property in New York City, including $14 million fraud claims, breach of fiduciary duty claims and breach of contract
- Spearheaded as general outside counsel to an international manufacturer (the largest of its kind in the world) the favorable settlement of a $25 million products liability action after several rounds of mediation, successfully resolving complex insurance coverage issues and coordinating three outside defense firms in the defense of the manufacturer
- Recovered, by way of judgment and settlements, millions of dollars on behalf of disabled professionals and other employees under private and ERISA disability insurance policies
- As general outside corporate counsel to an international manufacturer, provides on-going oversight of all legal affairs of the company, including employment, regulatory, acquisitions and joint ventures, licensing and intellectual property transactions, distribution agreements, independent contractor agreements, operating agreements and related matters

Mr. Schlosser serves in various teaching capacities: He is a member of the faculty of the National Institute for Trial Advocacy; has chaired the Continuing Legal Education Program on New York Civil Motion Practice at Hofstra Law School; and is a member of the Continuing Legal Education faculty panel of the New York State Bar Association and the Nassau County Bar Association Academy of Law, where he instructs experienced practicing attorneys. He has given CLE seminars and presentations with some of the most prominent judges in the state and federal courts, including Supreme Court Commercial Division Justices Timothy S. Driscoll, Vito M. DeStefano, Stephen Bucaria, Emily Pines, Elizabeth Hazlitt Emerson, Jerry Garguilo, James Hudson, Saliann Scarpulla and Thomas Whelan, Appellate Division Justices Leonard Austin, Karla Moskowitz, Barbara Kapnick and federal judiciary such as U.S. District Court Judges Shira Scheindlin, Richard J. Sullivan and Nicholas G. Garaufis and Magistrate Judges Arlene R. Lindsay, William Wall, and the late Magistrate Judge A. Kathleen Tomlinson. Many of Mr. Schlosser's activities can be viewed in detail by clicking on the relevant links on his profile page. Click here to view details from meetings of Nassau County Bar Association's Commercial Litigation Committee, which Mr. Schlosser chaired from 2013-2015. Mr. Schlosser is also an active member of the Commercial Division Committee of the Suffolk County Bar Association. In 2016, Mr. Schlosser served as the President of the Theodore Roosevelt American Inn of Court.

Mr. Schlosser has written extensively on many aspects of the law, publishing numerous articles in leading legal publications. He has authored the "Litigation Review" column for the New York Law Journal and served on the Board of Editors of the Nassau Lawyer, which is the official publication of the Nassau County Bar Association. Many of Mr. Schlosser's articles can be viewed by clicking on the "Publications" link on his profile page or view the comprehensive list in this document. He is also the author of a well-recognized blog, www.nyfraudclaims.com, which covers new developments concerning claims of fraud and misrepresentation under New York law.

Active in charitable organizations, Mr. Schlosser received the 2003 Leadership Award presented by the Long Island Chapter of the National Multiple Sclerosis Society. He has also served as a faculty member of the Construction Management Institute, sponsored by the New York State Chapter of the National Association of Minority Contractors, helping minority-owned contractors enhance their developing businesses.

Kevin Schlosser

During law school, Mr. Schlosser was a Member and then Articles Editor of the Hofstra Law Review. In his capacity as Articles Editor, Mr. Schlosser interacted with and edited articles of some of the most prominent and well-respected legal scholars, including law professors, evidence experts and Congressional leaders. He also clerked for the Honorable George C. Pratt, United States Circuit Court Judge, where he drafted several court decisions, including a complex antitrust ruling. He also obtained valuable trial experience while clerking in the Criminal Division of the United States Attorney's Office for the Eastern District of New York, where he assisted in the prosecution of several major felony cases. Mr. Schlosser graduated law school with the highest honors. Additionally, he was a founding officer of a national criminal justice honor society at John Jay College of Criminal Justice of the City University of New York. At the outset of his career, Mr. Schlosser acquired intensive litigation experience, having been trained at two prominent firms based in New York City: Patterson, Belknap, Webb & Tyler, and Chadbourne & Parke. In 1990, he became associated with one of Long Island's largest law firms, where he rose to the level of a managing partner and head of its litigation department, the largest practice group in the firm. After joining Meyer, Suozzi and becoming a partner in 2002, Mr. Schlosser was appointed Co-Chair of the firm's Litigation Department in November 2002. In 2006, Mr. Schlosser became Chair of the firm's Litigation and Dispute Resolution Department and has held that position through the present. He is also a member of the firm's Management Committee. Mr. Schlosser is rated "AV Preeminent" by Martindale-Hubbell, the highest level in professional excellence and ethics. Mr. Schlosser was recognized by Long Island Pulse Magazine in 2010 and 2011 as the region's "Top Legal Eagle for Litigation." Mr. Schlosser has been named to the New York Super Lawyers list as one of the top attorneys in New York from 2012-2025.

Kevin Schlosser Published Articles

IMPORTANT STATUTE OF LIMITATIONS CONSIDERATIONS FOR FRAUD AND OTHER COMMERCIAL CLAIMS
Spring 2024
The Legal Brief

THE IMPACT OF FRAUD CLAIMS ON CONTRACTUAL ARBITRATION AND JURY WAIVER PROVISIONS
Spring 2023, Vol. 28, No. 1
NY Litigator

LITTLE KNOWN FRAUD FUN FACTS: THE SECRET IS OUT
Spring 2023
The Legal Brief

THE USE OF PRIVATE JUDGES: NEW WORLD, NEW WAVE?
November 6, 2020
New York Law Journal

RENEWED ALLURE IN HIRING "PRIVATE JUDGES" UNDER THE CPLR
May 28, 2020
The Suffolk Lawyer

CAN ALLEGATIONS OF FRAUD VITIATE CONTRACTUAL JURY WAIVERS, ARBITRATION CLAUSES AND FORUM SELECTION PROVISIONS?
June 2019
The Suffolk Lawyer

LAWYERS' ROLE KEY TO PRESERVING AND PREVENTING FRAUD CLAIMS
December 2, 2016
New York Law Journal

NEW YORK SHOULD CATCH THE FEDERAL ESI WAVE BEFORE IT'S TOO LATE
December 23, 2015
New York Law Journal

READING RESTRICTIVE COVENANT TEA LEAVES FROM STATE'S HIGH COURT
July 24, 2015
New York Law Journal

TIME TO REVISE EMPLOYMENT RESTRICTIVE COVENANTS
April 16, 2014
New York Law Journal

COURTS BOLSTER RELEASE OF FIDUCIARY DUTIES AND FRAUD
April 16, 2013
The Nassau Lawyer

GRAPPLING WITH FIDUCIARY DUTIES IN ENFORCING CONTRACTS
October 27, 2011
New York Law Journal

FEDERAL PLEADINGS ARE RECEIVING HEIGHTENED SCRUTINY UNDER NEW STANDARD
Focus on Commercial Litigations
October 28, 2009
The Suffolk Lawyer

SECOND CIRCUIT BROADENS DISABILITY INSURANCE REMEDIES - Article by Kevin Schlosser and Robert C. Angelillo
March 7, 2009
New York Law Journal

NEW FEDERAL CASE EXPANDS RIGHTS OF DISABILITY INSURANCE CLAIMANTS
Slupinski v. First Unum Life Insurance 2nd Circuit Attorney Fees and Interest Awarded
February 2, 2009
www.msek.com

LIBERALIZING DISCOVERY IN ERISA DISABILITY INSURANCE CASES
Litigation Review
September 23, 2008
New York Law Journal

NASSAU COMMERCIAL DIVISION ADDS E-JURISPRUDENCE
Litigation Review
July 22, 2008
New York Law Journal

NEW PERSONNEL IN THE COMMERCIAL DIVISIONS
Litigation Review
May 27, 2008
New York Law Journal

DODGING AN E-BULLET SANCTION
Litigation Review
March 25, 2008
New York Law Journal

CLARIFYING PUNITIVE DAMAGE CONFUSION
Litigation Review
January 22, 2008
New York Law Journal

A CORPORATE DISSOLUTION MINEFIELD
Litigation Review
November 27, 2007
New York Law Journal

RARE CASE HIGHLIGHTS PITFALLS OF UNCONSCIONABLE CONTRACTS
Litigation Review
September 25, 2007
New York Law Journal

RECENT ISSUES IN COLLATERAL ESTOPPEL
Litigation Review
July 24, 2007
New York Law Journal

RES JUDICATA AND PIERCING THE CORPORATE VEIL
Litigation Review
May 22, 2007
New York Law Journal

BINDING SETTLEMENTS THROUGH EMAIL?
Litigation Review
March 27, 2007
New York Law Journal

AFFIRMATIVE STEPS TO PRESERVE AFFIRMATIVE DEFENSES
Litigation Review
January 23, 2007
New York Law Journal

WEAVING JURISDICTION FROM THE WEB
Litigation Review
November 28, 2006
New York Law Journal

PRIVILEGE PROTECTIONS FOR ACCOUNTANTS
Litigation Review
September 26, 2006
New York Law Journal

INADVERTENT WAIVER OF PRIVILEGE IN THE E-AGE
Litigation Review
July 25, 2006
New York Law Journal

ADMISSIBILITY OF ETHICS CODES IN LEGAL MALPRACTICE ACTIONS
Litigation Review
May 23, 2006
New York Law Journal

HIGH-FLYING TORT DECISIONS
Litigation Review
March 28, 2006
New York Law Journal

NEW STATEWIDE UNIFORM RULES FOR COMMERCIAL DIVISION
March 1, 2006
Nassau Lawyer

LIMITATIONS ON MARITAL PRIVILEGE
Litigation Review
January 24, 2006
New York Law Journal

DISQUALIFYING EXPERTS BASED ON CONFLICTS OF INTEREST
Litigation Review
November 22, 2005
New York Law Journal

THE FINE ART OF DRAFTING PLEADINGS
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JURY OR NON-JURY? THAT IS THE QUESTION
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New York Law Journal

DEFAULT JUDGMENT MOTIONS
Litigation Review
May 24, 2005
New York Law Journal

APPLYING SIMPLE PREJUDGMENT INTEREST NOT SO SIMPLE
Litigation Review
March 22, 2005
New York Law Journal

RIGHTS OF DISABILITY INSURANCE CLAIMANTS BOOSTED WITH DECISION
Outside Counsel
February 15, 2005
New York Law Journal

Kevin Schlosser Published Articles

NASSAU DECISION PAVES WAY TO GREATER USE OF "BLACK BOX" EVIDENCE
Litigation Review
January 25, 2005
New York Law Journal

STATE LAW ON COST OF E-DISCOVERY IS STARTING TO TAKE SHAPE
Litigation Review
November 23, 2004
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TWO RECENT SPOLIATION RULINGS IMPOSE SEVERE SANCTIONS
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September 28, 2004
New York Law Journal

RESTRICTIVE COVENANTS REMAIN RIPE AREA OF LITIGATION
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July 27, 2004
New York Law Journal

JUDGES OFFER INSIGHTS ON ORAL ARGUMENT
Litigation Review
May 25, 2004
New York Law Journal

NEW LOCAL FEDERAL RULE FOR SUMMARY JUDGMENT MOTIONS
Litigation Review
March 23, 2004
New York Law Journal

ATTORNEY CONFLICTS OF INTEREST IN CORPORATE DISPUTES
Litigation Review
January 27, 2004
New York Law Journal

ELECTRONIC CASE FILING COMING TO A COURTHOUSE NEAR YOU
Litigation Review
November 25, 2003
New York Law Journal

COMMERCIAL DIVISION JUDGES HELP SHAPE PROCEDURE AND LAW
Litigation Review
September 23, 2003
New York Law Journal

E-VOLVING E-MAIL E-DICTS
Litigation Review
August 4, 2003
New York Law Journal

DISABILITY INSURANCE UNDER ERISA: ITS NOT YOUR ORDINARY STATE CONTRACT CLAIM
October 6, 2002
The Nassau Lawyer

CORPORATE HEALTHCARE TRANSACTIONS: AVOIDING CRIMES, DISMISSALS AND EMBARRASSMENT
April 1, 2002
The Nassau Lawyer

MAXIMIZE DISABILITY INSURANCE, MINIMIZE MALPRACTICE EXPOSURE WITH PREVENTIVE LEGAL MEDICINE
June 1, 2001
N.Y. Hospital & Health News

E-MAIL E-MERGING E-NORMOUSLY IN LITIGATION
April 1, 2001
The Nassau Lawyer

MILLION - DOLLAR RECOVERY IN DISABILITY INSURANCE CASE HOLDS LESSONS
June 1, 2000
N. Y. Hospital & Health News

'PAY-WHEN-PAID' REVISITED
March 15, 2000
New York Law Journal

HOW TO AVOID LITIGATING DISPUTES IN A FOREIGN, INCONVENIENT FORUM
November 1, 1999
Construction Law

SURETY'S SUBROGATION RIGHTS REJECTED IN COURT'S LATEST DECISION ON LIEN LAW
April 8, 1999
New York Law Journal

ANOTHER BOMB EXPLODES IN THE LIEN LAW MINEFIELD
February 11, 1998
New York Law Journal

HIGH COURT BOLSTERS LIEN LAW TRUST PROTECTIONS
January 14, 1997
New York Law Journal

HAS 'PAY-WHEN-PAID' BEEN LAID TO REST?
January 10, 1996
New York Law Journal

THE STATUTORY MINEFIELD OF EDUCATION LAW §3813
September 28, 1994
New York Law Journal

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THE STATUTORY MINEFIELD OF EDUCATION LAW §3813
September 28, 1994
New York Law Journal

Kevin Schlosser Seminars

Participates in New York State Bar Association's Panel Discussion
There Has to be a Better Way: Changing How We Practice to Obtain Professional Satisfaction
May 6, 2023

Participates in New York State Bar Association's Panel Discussion
An Evening with the Commercial Division Justices
September 17, 2020

Panelist at the New York State Bar Association's Commercial and Federal Litigation Section
Restrictive Covenants: The Good, the Bad and What the Future Holds
June 17, 2020

Participates in New York State Bar Association's Panel Discussion
An Evening with the Commercial Division Justices
June 14, 2017

Moderator at the New York State Bar Association's Panel Discussion
An Evening with the Commercial Division Justices
June 21, 2016

Speaks at the New York County Lawyers' Association CLE Program
Noncompetition and Confidentiality Provisions in Employment Agreements: Current Status of the Law in New York and State and National Trends
November 4, 2015

Participates in New York State Bar Association's Panel Discussion
An Evening with the Commercial Division Justices
June 8, 2015

Moderates for American Inns of Court
Litigation Overload Facing Federal and State Courts-Trying to Stem the Tide & What Makes a Great Commercial Court
May 27, 2015

Participates in the State Commercial and Federal Court Round-Up Program
June 4, 2014

Participates on Panel for the Hofstra Law's Moot Court Board
March 13, 2014

Moderates NBI Program
As Judges See It: Top Mistakes Lawyers Make in Civil Litigation
June 7, 2013

Speaks at Nassau Academy of Law Program
Advice from the Experts: Successful Strategies for Winning Commercial Cases in New York State Courts
May 9, 2013

Chairs Civil Action Program at the Theodore Roosevelt American Inn of Court
Strategies and Techniques of Direct and Cross Examination of Witnesses at Trial
February 11, 2013

Participates in the Hofstra Law Intramural Competition
January 24, 2013

Serves as Instructor at the Hofstra Trial Techniques Program
The National Institute of Trial Advocacy and the E. David Woycik, Jr. Intensive Trial Advocacy Program
January 4, 2013

Speaks at Suffolk Academy of Law CLE Program
Strategies and practical advice for maximizing the effectiveness of each stage of the litigation
October 11, 2012

Presents in First Ever Joint Seminar for Appellate Division Justices
April 25, 2012

Presents CLE to Suffolk County Bar Association with the Honorable Emily Pines
The CPLR in Everyday Practice
April 19, 2012

Speaks at the Theodore Roosevelt American Inn of Court at the Nassau County Bar Association
A Civil Action - Jury Selection
February 15, 2012

Kevin Schlosser Seminars

Speaks at the Alexander Hamilton Inn of Court at Touro Law School
Alexander Hamilton Inn of Court Program on Injunctions
January 24, 2012
Presents CLE on Expert Witness Discovery at Nassau County Bar Association
June 2, 2011

Speaks at the Nassau County Bar Association
E-Discovery: What the Litigator Needs to Know to Avoid Professional Liability
June 7, 2010

Presents CLE to ACC-GNY Corporate Counsels
June 8, 2011

Achieving 20-20 Hindsight: Practical Solutions to Avoid Rescission, Unenforceability and Misinterpretation of Your Contracts
June 8, 2011

Presents CLE to Inns of Court
April 19, 2010

Presents CLE to Inns of Court
Undoing the Done: Contract? What Contract?
February 3, 2009

Kevin Schlosser Participates as a CLE Instructor at the Annual Meeting at the American Bar Association
Zapped! The New and Complex World of E-Discovery
August 8, 2008

Presents Seminar for the New York State Bonding Initiative
Legal Aspects of Contract Management and Key Issues Regarding Tort Law in the State of New York
May 8, 2008

Lectures at Hofstra Law School
March 20, 2008

Participates at the Federal Civil Practice Update - CLE
May 15, 2007

Speaks at the Theodore Roosevelt American Inn of Court at the NCBA
Inadvertent Waiver of Attorney- Client and Work Product Privileges in the Electronic Age
February 8, 2007

Presents Construction Law Seminar
Construction Management Training Course
July 18, 2006

Presented CLE with the Honorable Leonard B. Austin to the Westchester Women's Bar Association
Electronic Discovery: The New Frontier, An Interactive, Practical Guide to the Latest State and Federal Principles
October 5, 2006

Speaks at First American Title Company
Electronic Evidence in Litigation- the New Frontier
May 17, 2005

Speaks at the Theodore Roosevelt American Inn of Court at the Nassau County Bar Association
Electronic Discovery
May 12, 2005

Speaks at the Nassau Academy of Law, Nassau County Bar Association
Super Sunday Civil Litigation CLE Program Segment on Electronic Discovery
January 11, 2004

Speaks at the Nassau County Bar Association
Electronic Discovery
October 27, 2004

Speaks at the New York State CPA Society
What a savvy litigator looks for in a financial expert witness
November 24, 2003

Speaks at the Nassau Academy of Law, Nassau County Bar Association
Mastering Civil Litigation - Electronic Discovery
December 2, 2003

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June 24, 2015

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Reading Restrictive Covenant Tea Leaves From State's High Court

New York Law Journal

By: Kevin Schlosser

Anyone familiar with the law on employment restrictive covenants knows that it is not particularly easy to predict whether any given restriction will be enforced by the courts. So, when the New York Court of Appeals weighs in on issues concerning restrictive covenants, one is well advised carefully to consider and account for the latest pronouncements of the high court. Reading these important tea leaves may not always enable planning with precision, but ignoring them is ill-advised.

This is why the Court of Appeals' latest such decision, albeit rather brief, is an important read. In Brown & Brown v. Johnson, 25 N.Y.3d 364 (June 11, 2015) the Court of Appeals addressed two issues—(1) whether the courts in New York should enforce a choice of law provision in an employment contract that applied Florida substantive law, which differs markedly from New York law; and (2) whether to allow partial enforcement of a restrictive covenant by "blue penciling" the agreement, narrowing its scope to a permissible extent. While the court's discussion of the choice of law issue provides a helpful refresher on New York law, the more significant ruling resuscitated the judicial power to rewrite restrictive covenants to make them enforceable even when, as written, they are impermissibly overbroad.

In Brown, the Court of Appeals affirmed the Fourth Department's decision refusing to enforce the choice of law provision because Florida law strongly favors employers in considering whether restrictive covenants are enforceable and to what extent, thereby offending New York's strong public policy requiring a proper balance of the interests of the employee, the employer and the public in general. This affirmance was straightforward and did not represent any meaningful change in the governing law of New York.

More importantly and of potentially greater significance, however, is the Court of Appeals' reversal of the Fourth Department's unduly harsh and unbending refusal to blue pencil the restrictive covenant at issue.

Brown Facts and Background

To appreciate the significance of the Court of Appeals' decision in Brown, an understanding of the facts of the case and the analysis applied by the Fourth Department is necessary. The employer-plaintiff, a public company providing insurance and related services, terminated the defendant employee after four years of employment and then sued the employee and her new employer, seeking to enforce various restrictive covenants.

The employment agreement had been presented to the employee on her first day of work along with a number of other documents that she was required to sign and contained "the three covenants at issue...a non-solicitation covenant, which prohibited [employee] from soliciting or servicing any client of plaintiffs' New York offices for two years after termination of [employee's] employment; a confidentiality covenant, which prohibited [employee] from disclosing plaintiffs' confidential information or using it for her own purposes; and a non-inducement covenant, which prohibited [employee] from inducing plaintiffs' New York employees to leave plaintiffs' employment for two years after termination of [employee's] employment." The employment agreement also provided that it would be "governed by and construed and enforced according to Florida law."

As relevant to the Court of Appeals' decision and here, the motion court granted defendant-employee's motion for summary judgment and dismissed the cause of action seeking to enforce the covenant not to solicit or service any of plaintiff-employer's clients for two years, by applying New York law instead of Florida law as provided in the contract. The Fourth Department disagreed with the motion court that "Florida law bears no reasonable relationship to the parties or the transaction" so as to enforce the Florida choice-of-law provision. Nevertheless, the Fourth Department affirmed summary judgment by refusing to apply Florida law because it was "truly obnoxious" to New York's public policy governing employment restrictive covenants.

In refusing to enforce the covenant against soliciting or providing services to the employer's customers post-employment, the Fourth Department relied heavily upon two New York decisions on point—BDO Seidman v. Hirshberg, 93 N.Y.2d 382, 690 N.Y.S.2d 854 (1999) and Scott, Stackrow & Co., C.P.A.'s v. Skavina, 9 A.D.3d 805, 780 N.Y.S.2d 675 (3d Dept. 2004), lv. denied, 3 N.Y.3d 612 (2004). In BDO Seidman, the Court of Appeals held that the applicable restrictive covenant could only be enforced to the extent of restricting the accountant employee from serving clients to whom his employer introduced him during the employment relationship, rather than those clients with whom he had a previous relationship or those he never served while employed by plaintiff employer.

The Fourth Department applied the same analysis to the non-solicitation provision before it in Brown, finding that the employee could not be barred from continuing to serve clients with whom she had a prior relationship or those with whom she did not work while employed with plaintiff employer. Significantly, however, the Fourth Department strayed from the Court of Appeals' decision in BDO Seidman to "blue pencil" the restrictive covenant at issue and compel compliance to the extent the court deemed it enforceable.

The Fourth Department first quoted BDO Seidman's observation that "partial enforcement may be justified 'if the employer demonstrates an absence of overreaching, coercive use of dominant bargaining power, or other anti-competitive misconduct, but has in good faith sought to protect a legitimate business interest, consistent with reasonable standards of fair dealing....'" The Fourth Department also relied upon the following factors from Skavina: "Factors weighing against partial enforcement are the imposition of the covenant in connection with hiring or continued employment—as opposed to, for example, imposition in connection with a promotion to a position of responsibility and trust—the existence of coercion or a general plan of the employer to forestall competition, and the employer's knowledge that the covenant was overly broad."

The Fourth Department then took a particularly severe and rigid approach in determining whether the employer had met its burden, relying heavily upon Skavina, where the Third Department refused to blue pencil the agreement in question. The Fourth Department found it significant that the employee "was not presented with the [employment agreement] until her first day of work with plaintiffs, after [she] already had left her previous employer." The court also noted: "Plaintiffs have made no showing that, in exchange for signing the [employment agreement], [employee] received any benefit from plaintiffs beyond her continued employment." The court also found it damning that the employer had required the employee to sign the agreement seven years after BDO Seidman was decided, thereby showing that the employer had been on "notice" that its agreement was "overly broad."

Most severe was the manner in which the Fourth Department rejected the employer's argument that the agreement should be blue penciled because the agreement itself provided, as many such restrictive covenants do, that if any portion were deemed to be unenforceable, the court shall modify the agreement to render it enforceable. The court sternly commented that "allowing a former employer the benefit of partial enforcement of overly broad restrictive covenants simply because the applicable agreement contemplated partial enforcement would eliminate consideration of the factors set forth by the Court of Appeals in BDO Seidman, and would enhance the risk that 'employers will use their superior bargaining position to impose unreasonable anti-competitive restrictions uninhibited by the risk that a court will void the entire agreement, leaving the employee free of any restraint.'" In fact, remarkably, the Fourth Department found that including such a provision providing for modification by the courts actually demonstrated the employer's bad faith, showing that it knew the agreement was overbroad.

Under the Fourth Department's analysis—refusing to enforce, in its entirety, the restriction there as a matter of law—very few, if any, restrictive covenants would be blue penciled to save those portions that are deemed enforceable or to narrow them as written to enforce them only to the extent permissible. In reversing the Fourth Department, the Court of Appeals appears to have restored the practical availability of judicial blue penciling.

Court of Appeals Decision

On appeal, the Court of Appeals agreed with the Fourth Department that Florida law on restrictive covenants was "truly obnoxious" and offensive to New York's fundamental public policy in determining the enforcement of employment restrictive covenants. In comparing a Florida statute (Fla. Stat §542.335) that specifically required courts to view a number of factors in favor of employers, the Court of Appeals provided a handy summary of relevant New York law, including the meaningful differences with Florida law.

After noting that both states "require restrictive covenants to be reasonably limited in time, scope and geographical area, and to be grounded in a legitimate business purpose," the Court of Appeals summarized the principles of New York law that differed from Florida law: (a) "under New York's three prong test, '[a] restraint is reasonable only if it: (1) is no greater than is required for the protection of the legitimate interest of the employer, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public. A violation of any prong renders the covenant invalid'" (emphasis original); (b) "New York requires the employer to prove all three prongs of its test before the burden shifts" to the employee to prove the agreement should not be enforced; (c) New York "courts [must] consider, as one of three mandatory factors, whether the restraint 'impose[s] undue hardship on the employee'"; and (d) "New York law provides that '[c]ovenants not to compete should be strictly construed because of the "powerful considerations of public policy which militate against sanctioning the loss of a [person's] livelihood.'"

The Court of Appeals concluded: "Considering Florida's nearly exclusive focus on the employer's interests, prohibition against narrowly construing restrictive covenants, and refusal to consider the harm to the employee—in contrast with New York's requirements that courts strictly construe restrictive covenants and balance the interests of the employer, employee and general public—defendants met their '"heavy burden" of proving that application of Florida law [to the non-solicitation provision of the parties' agreement] would be offensive to a fundamental public policy of this State.'"

The Court of Appeals then went on to reverse the Fourth Department's ruling refusing to blue pencil the covenant at issue as a matter of law. The Court of Appeals noted: "Under New York law, the restrictive covenant was overbroad to the extent that it prohibited [employee] Johnson from working with any of plaintiffs' New York customers, even those Johnson had never met, did not know about and for whom she had done no work." (Incidentally, while this ruling is perfectly consistent with the court's own holding in BDO Seidman, as the Court of Appeals itself acknowledged in that same decision, where there are independent legitimate interests of employers at issue, such as where trade secrets are being misappropriated, unfair competition is present or where the employee is deemed "unique," covenants could potentially be enforced even over clients or customers with whom employees had prior relationships or with whom they never worked while employed by the plaintiff. See, e.g., Arthur J. Gallagher & Co. v. Marchese, 96 A.D.3d 791, 946 N.Y.S.2d 243 (2d Dept. 2012) and 1 Model Management v. Kavoussi, 82 A.D.3d 502, 918 N.Y.S.2d 431 (1st Dept. 2011) (both citing BDO Seidman).)

In any event, the Court of Appeals in Brown reiterated that it "has 'expressly recognized and applied the judicial power to sever and grant partial enforcement for an overbroad employee restrictive covenant.'" The court then emphasized that this requires '"a case specific analysis, focusing on the conduct of the employer in imposing the terms of the agreement.'"

Noting that the case was still in its early stages, with very little discovery, the court found there were numerous factual issues that should be explored, thereby barring summary judgment: "Here, although the covenant was imposed as a requirement of Johnson's initial employment and was not presented to her until her first day of work, the parties

dispute whether she understood the agreement, whether plaintiffs' employee discussed or explained it to her, what such a discussion entailed, whether she was required to sign it that day, or if she could have sought advice from counsel and negotiated the terms of the agreement." The court also noted that the employee "had already left her prior employment—which could have caused her to feel pressure to sign the agreement rather than risk being unemployed."

Lessons

The Court of Appeals' reversal in Brown breathes renewed life into the blue pencil doctrine, rejecting the rigid approach applied by the Fourth Department. It also provides employers with a road map in dealing with the presentation and signing of restrictive covenants by employees:

1. Consider limiting restrictive covenants that prevent soliciting or serving customers to only those with whom the employee had no prior relationships and with whom the employee is introduced by the employer, or establish in what respects the prior relationships were enhanced or developed at the expense of the new employer.
2. Consider presenting the form of restrictive covenant agreement to prospective employees before offers of employment are extended.
3. Document that the employee understood the agreement, was given time to review it, had the opportunity to seek counsel and had the right to negotiate changes, all before signing.
4. Be prepared to establish independent legitimate interests that are entitled to protection in addition to or apart from customer relations, such as trade secrets, proprietary information, confidential information and/or where the employee is unique or special.

Richard Eisenberg

Of Counsel

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Practice Areas

Corporate Law

Corporate Finance

Real Estate Law

Litigation & Dispute Resolution

Alternative Dispute Resolution

Local Government and Land Use

Education

Boston University Law School, J.D.

University of Rochester, B.A.

Memberships

Nassau County Bar Association

Theodore Roosevelt Inn of Court

United States District Court, Eastern District of New York Mediation Panel

Usdan Center for the Creative and Performing Arts, Board of Trustees

Touro Law Center Institute For Land Use and Sustainable Development

Admissions

New York State

U.S. Supreme Court

Second Circuit Court of Appeals

U.S. District Court, Southern and Eastern Districts of New York

U.S. Tax Court

Since January 2008, Richard Eisenberg has been Of Counsel to Meyer, Suozzi, English & Klein, P.C. located in Garden City, Long Island, N.Y., practicing in the Corporate Law, Corporate Finance, Real Estate and Litigation and Dispute Resolution practices. Mr. Eisenberg has a broad range of litigation experience in areas including contracts, securities fraud, RICO, anti-trust, land title matters, patent infringement, insurance coverage disputes, construction claims, corporate valuations and criminal matters. He has conducted jury and non-jury trials to verdict, as well as arbitrations and mediations, in the State and Federal courts throughout the New York metropolitan area. His appellate practice includes appearances before the Appellate Division, Second Department, the New York State Court of Appeals, the Second Circuit Court of Appeals and the United States Supreme Court. In his transactional work, Mr. Eisenberg has counseled clients in corporate reorganizations, internal investigations, bankruptcy, real estate financing, contracts, deferred compensation programs, intellectual property matters, mergers and acquisitions, tax matters, environmental compliance and the selection and supervision of outside counsel and accountants.

Notable experience includes:

- Has served as the owner's representative or project executive on approximately 100 million dollars of completed real estate development projects, both public and private. For these projects, he was responsible for land acquisition, planning, zoning, commercial and retail leasing, mortgage lending, property management, construction agreements and supervision of architects, engineers and contractors.

- Has served as General Counsel to numerous privately held corporations with interests in military manufacturing, software consulting, consumer products, engineering, construction and property management. In that position, he has directed mergers and acquisitions, corporate finance, government and commercial contracts, regulatory compliance and the supervision of litigation throughout the United States.

- Served as the Executive Secretary to a major private family charitable foundation on Long Island; supervised grant-making and administration.

Richard Eisenberg

- Served on the Valley Stream, New York Board of Education from 1984-2005, including several terms as President. Responsible for school district legal matters, bond issues and construction, recruiting of key personnel and negotiation of teacher contracts.

- Appointed to the adjunct faculty at Touro Law School, Central Islip, New York in January 2019, where he teaches a course in transactional law. Touro has honored Mr. Eisenberg twice, in 2019 with the Paul S. Miller Award, and again in 2024 with the Builders Society Award, the highest recognition for service to the Law School.

Mr. Eisenberg began his career as a Kings County Assistant District Attorney, where he prosecuted felony cases including homicides and public corruption matters. During part of his tenure as an Assistant DA, he was assigned to the Office of the Special Narcotics Prosecutor for the City of New York from 1977 to 1978.

JASPREET S. MAYALL
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EXPERIENCE

August 1991- Present

Attorney/Co-Managing Partner
CERTILMAN BALIN ADLER & HYMAN, LLP, East Meadow, New York

January 1, 2026 – Present	Co-Managing Partner
October 2013 – Present	Member, Executive Committee (6 members)
August 2004 – Present	Member, Management Committee
January 1999 – Present	Partner
August 1991 – 1998	Associate

Co-Managing Partner of the firm. Chair of the Telecommunications and the Bankruptcy and Restructuring Groups. Serve as outside general counsel to numerous telecommunications, pharmaceutical companies and franchisees. Provide daily counsel to master wholesalers and retailers of wireless products and services, handling their agreements and negotiations with their wireless providers. Counsel clients on mergers, acquisitions, joint venture agreements, OEM agreements, retail leases, daily transactions and issues, as well as matters requiring litigation. Litigate commercial matters in state and federal Courts. Counsel to trustees, debtors, secured and unsecured creditors in bankruptcy proceedings. Significant experience in trials and appeals before New York's state and federal courts.

APPOINTMENTS

- Member of the State of New York's Attorneys Committee on Character and Fitness for the Second, Tenth, and Eleventh Judicial Districts. This Committee requires its members to certify that an applicant is qualified to be admitted or readmitted, after suspension or disbarment, as an attorney in the State of New York. Appointed the first time in 2007 by the Appellate Division.
- Special Master, Second Judicial Department, State of New York, to mediate and resolve pending appeals. Appointed 2018, by Appellate Division.
- Member of the New York State Court's Commercial Division Advisory Council

CIVIC AFFAIRS

2017	American Heart Association, Long Island Chapter, *Board Member*
2015	The Nassau County Indian American Advisory Committee, *Member/pursuant to Executive Order No. 24-1016*
2007	The South Asian Chamber of Commerce of Tri-State, Inc., *Director/Vice President*
2005 – 2007	The Indian American Chamber of Commerce, *Director/Legal Counsel*
2000 – 2005	Indian American Lawyer's Association, *President*

EDUCATION

HOFSTRA UNIVERSITY SCHOOL OF LAW, Hempstead, New York
1991 Juris Doctor

HOFSTRA UNIVERSITY, Hempstead, New York
1988 Bachelor of Business Administration

BAR ADMISSION

New York (1992); the District of Columbia (1993); New Jersey (1991); The Eastern, Southern, Western & Northern Districts of New York and The District of New Jersey (1991).

HONORS

Named to the 2010, 2013 – 2024 *New York Super Lawyers* List
Named one of Long Island's "40 Under 40 Rising Stars" by *Long Island Business News* in 2003.
Recognized by the office of the Nassau County Executive as an Indian American Leader and recipient of the Nassau County Community Service Award.

LANGUAGES

Conversational in Hindi and Punjabi.

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EDUCATION

Maurice A. Deane School of Law at Hofstra University,
Hempstead, NY
Juris Doctor Candidate, May 2026
Activities: Member, Dispute Resolution Society; Member, Real Estate Law Society; Member, Construction Law Society

Farmingdale State College, Farmingdale, NY
Master of Science in Technology Management, May 2019

Farmingdale State College, Farmingdale, NY
Bachelor of Science in Architectural Engineering Technology and Construction Management Engineering Technology (dual major), May 2012

EXPERIENCE

Peckar & Abramson, P.C., New York, NY
Law Clerk, May 2025 – June 2025
Conduct comprehensive legal research on construction-related matters, including contract disputes, and project delays. Draft and revise legal memoranda, briefs, affirmations, memorandum of law, and motions to dismiss. Attend hearings, mediations, arbitrations, and meetings with clients. Support attorneys in client meetings, taking notes and summarizing key points

Environmental Protection Agency, New York, NY
Intern, January 2025 – April 2025
Conduct extensive legal research on environmental matters pertaining to water and energy in New York and the Carribean. Prepared and reviewed legal memorandums. Collaborate with teams in other branches to support legal research and initiatives. Support attorneys in client meetings, taking notes and summarizing key points.

Liberty Utilities New York Water, Merrick, NY
Summer Associate, May 2024 – August 2024
Served as an intern in the legal department. Duties included conducting legal research and drafting memoranda for utility regulatory matters and for ongoing litigation in various areas, reviewing construction contracts and ensuring conformity with negotiated terms, drafting easement agreements and filing with the County Clerk's office, and attending court. Facilitated acquisition of land with outside counsel, assisted with title search, and sales contract.

Liberty Utilities New York Water, Merrick, NY
Engineering Project Manager III, December 2018 – Present
Monitor and manage budgets and schedules for capital investment projects. Complete capital

projects ranging from $500k to $50 million. Collaborate with various municipalities, utilities, and developers to coordinate ROW projects in the Liberty district. Implement projects in compliance with regulatory developments, and with consideration given to new technology and current trends in water quality and treatment. Schedule and complete projects within capital budgets and regulations. Facilitate land acquisitions, easements, right of ways, permits, certificates, and other project approvals. Handle financial analysis and budget management. Manage a team of approximately five people, helping them achieve individual goals.

IMEG, Woodbury, NY
Civil Engineer, August 2017 – June 2018
Prepared full site plan, sanitary and civil engineering drawings. Provided calculations and details for drawings for the Department of Buildings. Filled out short environmental assessment forms and notice of intent forms. Completed feasibility studies and managed the Governor's Office of Storm Recovery Grant. Designed subdivisions and master plans. Created conceptual design.

Northcoast Civil Engineering & Land Surveyors, Oyster Bay, NY
Civil Engineer, September 2015 – August 2017
Prepared full site plan, sanitary and civil engineering drawings. Provided calculations and details for drawings for the Department of Buildings and the Department of Environmental Conservation. Completed short environmental assessment forms and notice of intent forms. Conducted site surveys and structural as-builts.

LANGUAGE SKILLS
Spanish (fluent); Italian (conversational)

INTERESTS
Acrylic painting, Taino mythology, woodworking

MICHAEL V. PENA

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EDUCATION

Maurice A. Deane School of Law at Hofstra University, Hempstead, NY
Juris Doctor Candidate, May 2027
GPA: 3.36
Honors: *Family Court Review*, Staff Editor, Vol. 64
Activities: Real Estate Law Association, Secretary; Christian Legal Society, Treasurer; Alumni Student Mentorship Program; Nassau County Bar Association; Suffolk County Bar Association

University At Albany – State University of New York, Albany, NY
Bachelor of Arts, *magna cum laude*, Criminal Justice and Emergency Preparedness, Cybersecurity, Homeland Security, Concentration in Homeland Security, May 2024
GPA: 3.57
Honors: Dean's List, Fall 2020, Spring 2021, Fall 2021, Fall 2022, Spring 2023, Fall 2023, Spring 2024
Activities: Digital Forensics Club

EXPERIENCE

Christodoulou & Lau, P.C., Great Neck, NY
Intern, June 2025 – December 2025
Review contracts for the purchase and sale of residential properties, condominiums, cooperatives, and commercial real estate transactions. Attend and facilitate closings for residential properties, condominiums, cooperatives, and commercial real estate transactions. Review and prepare all necessary documentation for real estate closings, including closing statements, deeds, transfer documents, and affidavits.

Blue Umpires, Long Island, NY
Baseball Umpire, June 2021 – Present
Monitor integrity of athletic conduct concerning athletes and coaches. Trained and skilled at remaining composed and professional in high pressure and emotionally charged situations with coaches, players, and fans.

Retro Fitness, Colonie, NY
Membership Experience Trainer, November 2022 – May 2023
Membership Experience Associate, February 2022 – November 2022
Diligently trained all employees to be welcoming and helpful to members, which increased overall services expectations. Scheduled and assigned daily work and activities for team members and helped create training materials for new employees.

New York State Division of Homeland Security and Emergency Services, Albany, NY
Office of Disaster Recovery Intern, January 2023 – May 2023
Assisted with tasks required for the upcoming NYS Hazard Mitigation Plan. Collected and analyzed hazard mitigation data in all the counites in NYS as well as the cities within them. Communicated and worked diligently with co-workers and interns in order to complete tasks and assignments in a timely manner.

New York State Justice Center for the Protection of People with Special Needs, Delmar, NY
Office of Investigations Intern, January 2024 – May 2024
Helped investigators conduct on site and virtual interviews with witnesses and subjects. Analyzed and organized evidence collected from scenes where crimes had been reported. Communicated and worked diligently with co-workers to ensure tasks were completed on time. Confirmed that investigators submitted their case findings on time.

INTERESTS

Running; health and fitness; fellowship with members of my community and church