

## DEATH OF THE CALIFORNIA NON-COMPETE\*

It has long been the policy of the State of California to favor employee mobility, and to disfavor agreements that prevented or discouraged that mobility. For this reason, non-competition agreements have largely been unenforceable in California. However, the federal Ninth Circuit Court of Appeal had indicated that there might be a “narrow-restraint” exception to the general rule against non-compete agreements in California.<sup>1</sup> This exception seemed to indicate that as long as an agreement allowed an individual to continue practicing some aspect of his or her chosen profession or occupation, then an agreement that limited part of how that practice took place would not be illegal under California law. A recent California Supreme Court case rejected this limitation, holding that non-competition agreements are illegal in California.<sup>2</sup>

The recent case, *Raymond Edwards II v. Arthur Andersen LLP*,<sup>3</sup> involves an accountant who, as a condition of employment, signed a non-compete agreement and a non-solicitation agreement with his employer, Arthur Andersen. When Arthur Andersen began to dissolve in the wake of the Enron scandal, the accountant decided that he wanted to work for a competing accounting company. Anderson refused to allow Mr. Edwards to seek such employment due to the non-compete agreement. The accountant filed suit, claiming that the non-compete was illegal under California law. The Supreme Court has ruled he was right.

The message is clear – California employers should not include non-compete provisions in any agreement with their employees. To do so risks invalidating entire agreements, and potentially subjecting the employers to penalties. Agreements designed and limited to protect a company’s trade secrets, however, are legal and recommended. If you have any questions about non-compete agreements, protecting your company’s trade secrets, or any other employment policies, please contact Douglas Large at 805.564.2070 or via e-mail at [dlarge@archbald.com](mailto:dlarge@archbald.com). Please also visit Archbald & Spray LLP’s website for other articles and information that you may find useful at [www.archbald.com](http://www.archbald.com).

\* This article is not legal advice. This article is merely written as an alert to recent developments in the law. If you seek legal advice, please contact Archbald & Spray LLP.

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<sup>1</sup> *Campbell . Trustees of Leland Stanford Jr. Univ.* (9<sup>th</sup> Cir. 1987) 817 F.2d 499.

<sup>2</sup> *Business & Professions Code* sections 16601, 16602, and 16602.5 recognize exceptions to the prohibition of non-competes when there is the sale of goodwill, of a corporation, of a partnership, or of a limited liability company.

<sup>3</sup> (2008) 44 C.4<sup>th</sup> 937.