

PENNSYLVANIA COURT SAYS WEALTH MANAGEMENT GROUP'S NON-SOLICITATION AGREEMENTS UNENFORCEABLE: TOP 3 TAKEAWAYS FOR THE FINANCIAL SERVICES INDUSTRY

Insights
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Pennsylvania Court Says Wealth Management Group's Non-Solicitation Agreements Unenforceable: Top 3 Takeaways for the Financial Services Industry

A recent non-precedential decision from the Pennsylvania Superior Court offers financial services businesses and professionals in the wealth management sector key lessons on restrictive covenants and client transitions. In a [February 18 ruling](#), a three-judge panel denied an investment advisory business's request for an order enforcing its non-solicitation agreements with three financial advisors who resigned to join a competitor. We'll explain what happened and provide the top three takeaways for your industry.

What Happened?

First National Bank of Pennsylvania (FNB), a Pennsylvania-based commercial bank with a wealth management group of more than 150 employees, filed suit after three of its financial advisors resigned and many clients moved their accounts to the advisors' new firm, Capital Wealth Advisors (CWA). CWA is a Florida-based Registered Investment Adviser providing wealth management services, including estate and financial planning.

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One of the three individuals (the former CEO's son) was asked to sign a customer non-solicitation agreement well after his employment began. The courts found that agreement unenforceable for lack of new consideration. While that result isn't surprising, the more consequential piece of the analysis concerns the two veteran advisor defendants. Each had decades of experience in the financial services industry and brought significant pre-existing client relationships to FNB. They were hired by FNB in 2012 and signed agreements that included each of the following:

- **A non-competition restriction** (for one or two years, depending on the advisor) limited to a defined geographic territory.
- **A customer non-solicitation restriction** during the restricted period barring the advisor from **"soliciting, diverting, or enticing"** FNB's existing or potential customers (with those terms left undefined).
- A separate provision prohibiting the advisor during the restricted period from **accepting business from or providing services to** customers or potential customers with whom the advisor had contact while employed by FNB (even if the advisor did not solicit the client).

Each advisor also had carve-out agreements exempting from certain restrictions any clients whose relationships predated their employment with FNB.

Following internal changes and escalating friction, all three individuals left FNB and joined CWA. After their resignations, many clients elected to move their accounts to CWA.

Importantly, based on the trial court's factual findings, **the advisors did not affirmatively reach out to clients**. Instead, they waited for clients to contact them, and only then discussed whether and how the advisor-client relationship could continue at CWA. The trial court also found that many clients learned of the departures from FNB itself, which notified customers shortly after the resignations – after which numerous clients communicated that they wanted to remain with the departing advisors.

3 Key Takeaways From the Court's Ruling

1. "Solicitation" Required An Affirmative Act

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The trial court found neither advisor violated the customer non-solicitation clause because neither affirmatively reached out to clients. With no contractual definition of “solicitation,” the trial court looked to a dictionary definition and focused on whether the advisors initiated contact.

The Superior Court affirmed, rejecting FNB’s arguments that the trial court effectively rewrote the agreement by reading “initiate contact” into “solicit” and failing to give independent meaning to the additional prohibited conduct (“diverting” and “enticing”). The appeals court reasoned that “solicit,” “divert,” and “entice” are all verbs requiring affirmative conduct, and that the record supported the finding that no such affirmative conduct occurred where the advisors merely responded to clients who unilaterally reached out to them.

Why This Matters: Whether conduct constitutes “solicitation” is often the central battleground in disputes involving departing financial advisors. This decision is a useful data point suggesting that, at least where the contract leaves “solicit/divert/entice” undefined, Pennsylvania courts may be reluctant to find a breach absent evidence of overt, affirmative outreach by the advisor.

2. “No-Accept/No-Service” Provision Too Vague and Overly Broad

The courts also addressed the separate restriction prohibiting the advisors from **accepting business from or providing services to** customers or potential customers they had contact with at FNB during the restricted period – regardless of whether the advisors solicited those clients.

Both the trial court and the Superior Court found this provision unenforceable. The trial court concluded the clause was vague and overly broad, emphasizing that it could unreasonably restrict longstanding relationships – including friends and family members – without regard to how those relationships originated or who initiated contact after the advisor’s departure. The Superior Court agreed, and it also reasoned that it would be unreasonable to treat FNB as having a protectable interest in client relationships that predated the advisors’ employment where FNB did not

subsidize or support the establishment of those relationships.

In addition, the Superior Court observed that FNB failed to present evidence that any clients beyond the advisors' pre-existing client bases moved to CWA – undercutting FNB's assertion that it had a protectable interest in the full universe of client relationships at issue.

Why This Matters: The outcome here shows that courts may be reluctant to enforce broad provisions that attempt to prevent an advisor from servicing clients who independently choose to follow a trusted advisor to a new firm in the absence of prohibited outreach.

3. Court's Take on Geographic Limits Likely to Cause Confusion

The appeals court's opinion also suggests FNB's non-solicitation agreement was void because it lacked geographic scope. In our view, that analysis is incorrect and may create confusion for courts and practitioners.

Customer-specific non-solicitation provisions are fundamentally different from broad non-competes. Unlike a non-competition restriction – which typically must be reasonably limited in duration and geography – a customer non-solicitation covenant is often already limited by who the employee cannot solicit (or, in some instances, cannot service). Courts frequently analyze customer-based restrictions through that lens, and the absence of geographic limits is not typically treated as a categorical defect where the covenant is cabined to identified customers or customer categories.

Here, the Superior Court's geography statement appears in a single sentence of analysis and cites a Pennsylvania Supreme Court decision that described the standard applied to non-competition agreements but did not actually hold that customer non-solicitation restrictions must be geographically constrained.

Why This Matters: The court's take here creates a risk that litigants may quote this sentence out of context to argue that Pennsylvania law requires geographic limits for customer-specific non-solicitation provisions – which

would represent a new requirement for Pennsylvania non-solicitation agreements. Because the decision is non-precedential, courts and practitioners should treat that statement with caution and should not assume it reflects controlling Pennsylvania law on customer non-solicitation agreements.

Conclusion

While customer non-solicitation covenants remain enforceable, the recent FNB case demonstrates the factors that Pennsylvania courts will look at to determine whether to uphold these agreements. We will continue to monitor developments in this area, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about this decision, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Employee Defection and Trade Secrets Practice Group](#) or [Financial Services](#) team.