

Chapter 16

Broadcast Employment Contracts

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I. INTRODUCTION

In today's world, radio or television personalities are a part of the lives of the people who watch them. Individuals listen to their favorite radio personalities during their commute to and from work.¹ People get their news in the evening from their favorite anchor. When a radio or television station hires a very well-known and popular on-air employee, that station makes a huge investment in that employee's identity and image. In order to protect losing such a uniquely talented employee to a competing station, the broadcaster may want the employee to sign an employment contract which contains a "covenant not to compete" or "non-compete covenant."

In recent years, many states that did not have statutes regulating covenants not to compete have passed statutes that specifically regulate covenants not to compete in the broadcast industry. Currently, Missouri courts are generally willing to enforce carefully crafted employment contracts which contain non-compete provisions if the court finds the agreement to be reasonable. This article discusses key issues which a court will consider important when deciding whether a covenant not to compete is reasonable and application of these principles in the broadcasting industry.

II. A COVENANT NOT TO COMPETE MUST BE REASONABLE

The law on the enforcement of non-compete agreements is well settled in Missouri. Missouri courts enforce covenants not to compete that are reasonably necessary to protect "certain narrowly defined and well recognized interests against appropriation by former employees," and that are reasonable in geographic and time scope.² The reasonableness of a covenant not to compete "requires a thorough consideration of surrounding circumstances, which includes the subject matter of the contract, the purpose to be served, the situation of the parties, the extent of the restraint and the specialization of the business."

A. Geographic Limitations

Geographic limitations are reasonable if "the employer possessed a stock of customers located co-extensively with those geographic limits."³ In other words, if the employer has a protectible interest in the geographic area. This statement of Missouri law has never been applied to the radio and television broadcast industry. However, a covenant not to compete prohibiting an employee from working in the broadcast range of the station would likely satisfy this "co-extensive" factor, as the broadcast range is where the employee works. Non-compete agreements of such limited geographic scope are routinely upheld by Missouri courts.⁴

B. Time Limitations

There is no specific rule in Missouri as to what constitutes a reasonable time limitation in a non-compete agreement. The general rule is spelled out in *Superior Gearbox Co. v. Edwards*.⁵ "The quality, frequency, and duration of employee's exposure to the customers is of crucial importance in determining the reasonableness of the [time] restriction."⁶

Missouri courts have generally upheld covenants not to compete with a time limit from two to five years in cases involving other industries.⁷ The case law from other jurisdictions also suggests that a non-compete of between one and two years will be enforced in the broadcast industry.

Despite these guidelines, there are factors which call for enforcement of both longer and shorter non-competes. A longer time restriction may be enforced if the employee "embodied" the employer in the eyes of customers.⁸ On the other hand, *Superior Gearbox* indicates that addition of a substantial sales force after termination of the employee, followed by a substantial increase in sales, may influence imposition of a shorter time restriction. This pronouncement indicates that replacing a renowned "on-air" employee with another renowned "on-air" personality could influence a court to impose a shorter time restriction. Finally, *Superior Gearbox* states that an employer's failure to secure a preliminary injunction or a temporary restraining order against the terminated employee is a relevant factor in assessing the reasonableness of a time restriction.

In calculating the reasonableness of time of a covenant not to compete, Missouri courts also consider the need to protect

legitimate interests. Legitimate interests recognized in Missouri include customer contacts and trade secrets.⁹

Customer contacts are “judicially recognized in this state [Missouri] as being a legitimate protectible [sic] interest.”¹⁰ Customer contacts are “essentially the influence an employer acquires over his employer’s customers through personal contact.”¹¹ Arguably, a radio or television personality has contacts with listeners and viewers and could influence these customers to switch stations.

With regard to trade secrets, the Missouri Uniform Trade Secrets Act (the “Act”), which provides that actual or threatened misappropriation of trade secrets may be enjoined, defines “trade secret” as:

Information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process, that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.¹²

“Trade secrets may include a list of customers and a code for determining discounts, rebates or other concessions in a price list or catalogue.”¹³ In *AEE-EMF, Inc.*, the Court discussed some of the factors to consider when determining whether the information in the possession of the employee was a trade secret.¹⁴ Such factors included whether the employer treated the information as trade secrets by requiring the signing of a nondisclosure statement, kept the information in a restricted area, used controls to prevent the dissemination of such materials, and/or required third parties to whom it would send the information to keep it confidential.¹⁵

Missouri courts will enforce covenants not to compete to protect confidential business information which consists of details of an employer’s operations and highlights the success or lack of success of the business operations and performance of employees.¹⁶ One of the considerations will be whether the employee was involved in developing the format and operation of his or her previous station and could harm that station by divulging to a new employer the procedures and future plans of the previous employer.

III. APPLICATION IN BROADCASTING

While the law on covenants not to compete is well settled, there is a dearth of case law in Missouri that specifically addresses the enforceability of a covenant not to compete in the context of the broadcasting industry. However, one decision strongly suggests that non-compete agreements will only be considered reasonable if they involve “key” employees.

In *West Group Broadcasting, Ltd. v. Bell*,¹⁷ the Missouri Court of Appeals, Southern District, refused to enforce a covenant not to compete in an employment contract between a Joplin radio station and one of its former radio announcers. Danielle Bell was the lone disc jockey on the seven-to-midnight show of a Joplin radio station owned by West. That radio station had a “hot country” format. Bell had the “number one rating” in the Joplin market for her time slot. She called herself “Hurricane Hanna.”

Bell signed an employment contract with West which included the following covenant not to compete:

The Employee agrees that in the event ... she resigns or is otherwise terminated ... from ... her employment with the Employer, the Employee will not compete with the Employer in any way within a 65 air mile radius from the tower location of the Employer’s radio station in Joplin/Webb City, Missouri, within a period of 180 days from resignation or termination of employment.¹⁸

Bell left the radio station owned by West and joined the morning-drive shift of a competing Joplin station. She started work there 39 days after leaving West. At her new station, Bell was assigned the 5:30 a.m. to 10:00 a.m. shift. Bell called herself “Robin Kane.” She wrote and read the news, conversed with the show’s male host and answered telephone calls from listeners. Her new station had a contemporary music format.

West sued Bell and her new employer and obtained an injunction to enforce the non-compete in her employment contract. However, the Court of Appeals overturned the trial court’s grant of an injunction in favor of West. The Court of Appeals noted that covenants not to compete are not favored in Missouri.¹⁹ Thus, an employer cannot extract a non-compete merely to protect itself from competition.

The *West Group* Court stated the reasonableness test as follows in the context of the broadcast industry:

The determination of reasonableness depends upon the competing needs of the parties as well as the needs of the public. These needs are:

- (1) The employer’s need to protect legitimate business interests, such as trade secrets and customer lists,
- (2) The employee’s need to earn a living, and
- (3) The public’s need to secure the employee’s presence in the labor pool.²⁰

The Court of Appeals held that there are only two legitimate employer interests that can be protected by enforcing a covenant not to compete in Missouri: customer contacts²¹ and trade secrets.²² Both parties conceded that Bell had not acquired trade secrets from West. Moreover, the court held that having a recognizable voice that could result in fans following Bell

from one radio station to another was *not* evidence of customer contacts sufficient to support a restraint on Bell's freedom to pursue her trade.²³

In reaching its holding, the court carefully distinguished the facts from those in two cases from other jurisdictions which enforced covenants not to compete which involved celebrity on-air employees in the broadcast industry.

The first case discussed by the Missouri court was *T.K. Communications, Inc. v. Herman*. In *T.K. Communications*,²⁴ a Florida radio station hired two morning-show disc jockeys from a rival station in violation of their non-competition contracts. The acquiring station "specifically utilized the names and reputations of [the two disc jockeys] to solicit advertisers and to attract listeners before the expiration of the non-competition period."²⁵ The two radio personalities also helped recruit other employees, explained the production of their former show and played recordings of their former show for their new employer. One of the on-air personalities admitted that their names, reputations and popularity were "significant" and of "unique value."²⁶ The court in *T.K. Communications* thus held the disc jockeys' non-competes were enforceable because "the use of the disc jockeys' valuable names and reputations and the capitalization on the disc jockeys' popularity" were intangibles which could not be replaced by money damages.²⁷

The second case which the *West Group* court distinguished, *Beckman v. Cox Broadcasting Corp.*, involved a well-known meteorologist and television personality named Johnny Beckman. Beckman left one Atlanta television station to join another.²⁸ At the time of his departure, Beckman was one of the most widely recognized television personalities in Atlanta. More than 97% of television viewers sampled in Atlanta were able to recognize him.²⁹ Cox spent in excess of one million dollars promoting Beckman's name, voice and image as part of its "Action News Team."³⁰ The Supreme Court of Georgia enforced Beckman's covenant not to compete because his former employer "had made an investment in Beckman's image as part of its own image, and was entitled to protect its own image by reasonably tailored restrictions."³¹

The *West Group* Court distinguished both *T.K. Communications* and *Beckman* from Bell's situation because, at her new station, she worked a different shift, played a different format of music, used a different pseudonym and had a co-host. Thus, Bell had taken only her own "aptitude, skill, mental ability and the voice with which she was born" and had never "attempted to capitalize on that personality or name recognition."³² However, the court suggested that if Bell had taken her on-air personality of "Hurricane Hanna" to the new radio station and adversely affected West's advertising revenue by directing listeners from her old station to the new station, the court might have enforced the covenant not to compete.³³

IV. SCOPE OF EMPLOYMENT AT NEW STATION

A separate concern when seeking to enforce a covenant not to compete is addressing what will happen if the radio or TV personality has a different scope of employment with a new station. This situation might arise where an "on-air" employee goes to work for another station in an "off-air" capacity. This might also arise where an on-air personality moves to a station that broadcasts an entirely different format. Missouri courts have not decided whether a non-compete will be enforced in either of these situations. However, case law from other jurisdictions provides some guidance when drafting a non-compete.

First, when a radio or television personality goes to work for a competing station, in an "off-air" capacity, the outcome of this issue depends on the language of the employment contract. For instance, in *Beckman* the court permitted Johnny Beckman to work behind the scenes as a meteorologist for his new employer during the term of his non-compete because the restrictive covenant only prohibited Beckman from working "on air" for a competing station. The covenant did not prohibit him from working "in any capacity" for a competing station.³⁴

On the other hand, in *T.K. Communications*, the disc jockeys' mere act of meeting with the management of the new station to plan a new radio show violated their non-compete agreements. Their contracts specifically prohibited the disc jockeys from being "employed or retained by, owning, managing, joining, controlling, or being connected with in any manner" a competing station.³⁵ Therefore, a broadly-drafted non-compete clause may be enforced to prohibit an "on-air" personality from collaborating in any way with a competing station for the duration of the agreement.

No Missouri court has directly ruled on whether an employment agreement which contains a non-compete clause prohibiting an "on-air" personality from working "in any capacity" for a competing station would be enforced. Nevertheless, radio and television stations should give consideration to drafting broad, non-compete provisions, which include phrases prohibiting an "on-air" personality from working for competition "in any capacity," because, even if found unreasonable, Missouri courts are permitted to employ their equitable powers to modify the extent of the restrictions, rather than declare the entire covenant void.³⁶

The second scenario arises where an on-air personality begins working for a station that broadcasts an entirely different format from that played by the first employer. In this scenario, it can be argued that because the audiences will be completely different (as between a "country" radio station and a "rock-n-roll" station, or between children's cable TV programming and sports programming, for example), enforcement of a non-compete agreement is unwarranted. The Alabama Supreme Court, after considering this same issue, decided that "the mere fact that one radio station broadcasts different programs

than another radio station does not necessarily warrant a conclusion that the listeners of each station do not overlap to some degree.”³⁷ Whether a Missouri court would follow this ruling is unclear given Missouri’s emphasis on customer contacts and trade secrets being required to enforce a covenant not to compete.

V. CONSIDERATION, CIRCUMSTANCES OF TERMINATION, AND DAMAGES

Finally, to enforce a covenant not to compete in Missouri, an employer must also establish that (a) there was consideration for the agreement³⁸ and (b) that the employee left voluntarily or the employee was terminated for good cause.³⁹ An employer need not show actual damages in order to enforce a covenant not to compete.⁴⁰

A. Consideration

For any contract to be enforced in Missouri, there must be adequate consideration to support the contract. In Missouri, signing a covenant not to compete at the inception of employment has been held to be adequate consideration.⁴¹ Promotions, acquisition of additional responsibility and pay increases all constitute adequate consideration in support of a written employment agreement.⁴² Even continued employment, by itself, has been held to be adequate consideration to support a covenant not to compete.⁴³

B. Circumstances of Termination

Enforcement of a covenant not to compete may also depend on how the employment relationship was terminated. Where the employee terminates the employee relationship, or where an employer terminates the relationship for good cause,⁴⁴ the non-compete is still binding. However, where the employer terminates an employee without good cause, “enforcement by injunction is not so clearly established.”⁴⁵ In *Showe-Time Video Rentals, Inc. v. Douglas*, the fact that the employee had not breached any provision of the contract, together with the fact that there was no evidence of any trade secrets, and the fact that the employer had terminated the agreement without cause,⁴⁶ led the court to hold the covenant not to compete unenforceable.⁴⁷ Similarly in *Roeder v. Ferrell-Duncan Clinic, Inc.*, the employer was barred from enforcing covenant after materially breaching employment contract by assigning contract without employee’s consent. 155 S.W.3d 76, 86 (Mo. Ct. App. 2005).

Similarly, if an employer materially breaches an employment agreement before an employee violates the covenant not to compete, the employer is barred from enforcing the restrictive covenant.⁴⁸ This generally presents a question of fact for the trial court.⁴⁹ Factors to consider in determining whether a breach of an employment contract is material include:

- (1) the extent to which the injured party will be deprived of a reasonably expected benefit;
- (2) the extent to which the injured party can be compensated for the part of that deprived benefit;
- (3) the extent to which the party failing to perform will suffer forfeiture;
- (4) the likelihood that the party failing to perform will cure that failure; and
- (5) the extent to which the behavior of the party failing to perform comports with the standards of good faith and fair dealing.⁵⁰

In *Forms Manufacturing, Inc. v. Edwards*, the employee signed a restrictive covenant based on a compensation of 60% of the gross profits from his sales commissions. The company later unilaterally changed his compensation and withheld commissions, forcing the employee to borrow money to cover his living expenses. There was a question of fact as to whether the company unilaterally breached his employment contract before the employee violated the restrictive covenant. The court held that by changing his compensation without consent and by retaining commissions, the employer was guilty of unclean hands and could not enforce a non-compete.⁵¹

C. Damages to Former Employer

Finally, in Missouri, an employer need not show that actual damage has occurred to obtain injunctive relief in the context of a covenant not to compete.⁵² The standard is “potential for damage.”⁵³ Therefore, a broadcasting company does not have to show actual loss of advertising revenue to enforce a covenant not to compete against a departing “on-air” personality. However, showing such damages bolsters the broadcasting company’s position.

VI. BROADCAST INDUSTRY CASES FROM OTHER JURISDICTIONS

In addition to those cases already discussed, there are a number of other state and federal courts which have considered the enforceability of covenants not to compete based on the laws of other states. While state laws vary considerably in their analysis and enforcement of non-competes, these cases may provide some guidance.

A few courts have enforced covenants not to compete involving the broadcast industry: *Radio One, Inc. v. Wooten*, 452 F.Supp. 2d 754 (E.D. Mich. 2006) (finding 75-mile restriction from radio transmitter reasonable); *Clooney v. WCPO TV. Div. of Scripps-Howard B.C.*, 300 N.E.2d 256 (Ohio App. 1973) (holding one-year covenant limited to television station’s

coverage area enforceable where services of employee were unique, unusual and of an extraordinary character); *Cullman Broad. Co., Inc. v. Bosley*, 373 So.2d 830, 836 (Ala. 1979) (describing one-year, one-county non-compete for radio disc jockey as “consistent with the standard of relevancy and reasonableness”); *Murray v. Lowndes County Broad. Co.*, 284 S.E.2d 10 (Ga. 1981) (holding two-year, one-county covenant enforceable against radio announcer who left to become the general manager of a competing station); *Pino v. Spanish Broad. Sys.*, 564 So.2d 186, 189 (Fla. App. 1990) (holding a 12-month, two-county radio non-compete both enforceable and assignable).

Most courts, however, have refused to enforce those covenants: *Pathfinder Communications Corp. v. Macy*, 795 N.E.2d 1103 (Ind. App. 2003) (denying preliminary injunction for failing to prove remedies at law were inadequate); *Weissman v. Transcon. Printing U.S.A., Inc.*, 205 F.Supp. 2d 415 (E.D. Pa. 2002); *American Broad. Co., Inc. v. Wolf*, 420 N.E.2d 363 52 N.Y.2d 394, (N.Y. App. 1981) (holding television sportscaster’s non-compete unenforceable because the term of the employment contract had expired and because there was no express covenant); *Frumkes v. Beasley-Reed Broad. of Miami, Inc.*, 533 So.2d 942 (Fla. App. 1988) (holding that disc jockey’s resignation did not trigger restrictive covenant because non-compete, as drafted, was to take effect only when radio station fired the employee for cause); *KGB, Inc. v. Giannoulas*, 164 Cal. Rptr. 571 (Cal. App. 1980) (holding former station-employer, “KGB,” was barred from enforcing non-compete against former employee who had made public appearances as “KGB Chicken,” when employee continued to make appearances as the San Diego chicken at sports and public events after employment contract term had ended); *KWEL, Inc. v. Prassel*, 527 S.W.2d 821, 822 (Tex. App. 1975) (refusing to enjoin disc jockey in absence of any evidence that radio station had or would suffer any damage or injury as a result of disc jockey’s employment by a competitor); *Metro Traffic Control, Inc. v. Shadow Traffic Network*, 27 Cal.Rptr.2d 573 (Cal. App. 1994) (holding traffic reporting business did not possess protectable trade secret in its knowledge and employee training as to major radio station’s particular requirements regarding quality, sound and personality of anchors); *Orion Broad., Inc. v. Forsythe*, 477 F. Supp. 198 (W.D. Ky. 1979) (holding covenant barring news anchor from working for competitors, but providing that employer could terminate contract upon 60 days notice, was unenforceable); *Richmond Bros., Inc. v. Westinghouse Broad. Co., Inc.*, 256 N.E.2d 304, 307 (Mass. 1970) (denying injunction against disc jockey where there was no evidence of lost advertising following the disc jockey’s departure and there was no evidence his success resulted from special training information or trade secrets received from his former employer).

While each state’s own unique laws and the language of the agreements played an important role in the outcome of each of these decisions, it appears that courts are generally reluctant to enforce covenants not to compete in the broadcast industry unless they involve key employees and are narrowly drafted. Indeed, several states have enacted statutes which limit covenants not to compete in the broadcasting field.⁵⁴ These states included Maine, Massachusetts, Arizona, Illinois, New York, as well as the District of Columbia. The American Federation of Television and Radio Arts will no doubtably continue to push this issue.⁵⁵

VII. CONCLUSION

While a statute prohibiting covenants not to compete in the broadcasting industry has not been enacted in Missouri, there is a trend toward regulation of these types of agreements. Broadcasters should consider requiring their key employees to sign an employment agreement which contains a covenant not to compete to avoid losing them to a competing station. However, when drafting such an agreement, a broadcaster must make sure that the restrictive covenant will only stay in force for a reasonable length of time and in a reasonably tailored geographic area to avoid a conclusion that the former employer is trying to keep its former employee from working at all.

Finally, as with all employment agreements, when a broadcaster comes to a point where it needs to enforce such an employment agreement in Missouri, the broadcaster must be sure there was adequate consideration for the agreement. In addition, the broadcaster must assure that the circumstances surrounding the end of the employment relationship do not create a situation where the court refuses to enforce the agreement.

Endnotes

1, *See Pathfinders Commc’ms Corp. v. Macy*, 795 N.E. 2d 1103, 1112 (Ind. Ct. App. 2003) (“morning drive slot is the most important day period for a radio station in terms of generating the largest audience and revenue”).

2 *West Group Broadcasting, Ltd. v. Bell*, 942 S.W.2d 934, 937 (Mo. Ct. App. 1997) citing *Herrington v. Hall*, 624 S.W.2d 148, 151 (Mo. Ct. App. 1981).

3 *Cape Mobile Home Mart, Inc. v. Mobley*, 780 S.W.2d 116, 199 (Mo. Ct. App. 1989), citing *Mid-States*, 746 S.W.2d at 617; *Orchard Container*, 601 S.W.2d at 303.

4 *Safety-Kleen Sys. Inc. v. Hennkers*, 301 F.3d 931 (8th Cir. 2002) (upholding covenant which barred employee from competing with former employer in any area in which he had worked for the employer).

5 869 S.W.2d 239, 248.

6 *Superior Gearbox*, at 248.

7 *See, e.g., AAE-EMF, Inc. v. Passmore*, 906 S.W.2d 714, 724 (Mo. Ct. App. 1995); *Superior Gearbox Co. v. Edwards*, 869 S.W.2d 239, 248 (Mo.

Ct. App. 1994) (5 year restriction); *Osage Glass*, 693 S.W.2d at 75 (employee enjoined for three years from working for competitor); *House of Tools*, 504 S.W.2d at 158 (three-year restriction upheld); *A.B. Chance*, 719 S.W.2d at 862 (five-year restriction upheld); *Thompson v. Allain*, 377 S.W.2d 465 (Mo Ct. App. 1964) (three-year restriction upheld against former partner).

8 *Superior Gearbox*, at 248 (justifying enforcement of a five-year restriction).

9 28 Mo. Stat. Ann. §431.202; *Sturgis Equipment Co., Inc. v. Falcon Indus. Sales Co.*, 930 S.W.2d 14, 17 (Mo. Ct. App. 1996).

10 *Deck and Decker Personnel Consultants, Ltd. v. Pigg*, 555 S.W.2d 705, 707 (Mo. Ct. App. 1977); *Herrington v. Hall*, 624 S.W.2d 148, 151 (Mo. Ct. App. 1981). See also *Adrian N. Baker & Co. v. Demartino*, 733 S.W.2d 14, 16-17 (Mo. Ct. App. 1987)(to find a protectable interest employer does not need to show actual solicitation of employer's customers, it was sufficient to show that former employee was making contacts with customers of employer seeking to maintain and establish further goodwill with these customers as a basis for future business after litigation with former employee); *Refrigeration Indus., Inc. v. Nemmers*, 880 S.W.2d 912, 921 (Mo. Ct. App. 1994) (evidence sufficient to establish protectable interest in customer contacts where employee had substantial contacts with customers who were repeat and continuous customers of employer and employee went to a place where he sold the same type of products).

11 *Sturgis Equipment Co., Inc. v. Falcon Indus. Sales Co.*, 930 S.W.2d 14, 17 (Mo. Ct. App. 1996).

12 See Mo. Rev. Stat. §417.555.

13 *Cape Mobile Home*, at 118.

14 *AEE-EMF, Inc. v. Passmore*, 906 S.W.2d 714, 721 (Mo. Ct. App. 1995).

15 *Id.*; Mo. Rev. Stat. §417.453(4).

16 *Cape Mobile Home*, at 118.

17 942 S.W.2d 934 (Mo. Ct. App. 1997).

18 *West Group* at 935.

19 *West Group* at 937.

20 *West Group* at 937, citing *Grebing* at 874.

21 *West Group* at 937; see also *Osage Glass, Inc. v. Donovan*, 693 S.W.2d 71, 74 (Mo. Banc 1985) (“An express agreement not to compete may be enforced as to employees having substantial customer contacts to establish customer contacts. It is not necessary to show that there is a secret customer list.”).

22 *West Group* at 937, citing *Mo-Kan Central Recovery Co. v. Hedenkamp*, 671 S.W.2d 396, 399 (Mo. Ct. App. 1984).

23 *West Group* at 937-8.

24 505 So.2d 484 (Fla. App. 1987).

25 *West Group* at 938, citing *T.K. Communications* at 485.

26 *West Group* at 938, citing *T.K. Communications* at 486.

27 *West Group* at 938, citing *T.K. Communications* at 486.

28 *Beckman v. Cox Broadcasting Corp.*, 296 S.E.2d 566 (Ga. 1982).

29 *Beckman* at 567, n.3. This fact may be pivotal to some courts. Cases from other states hold that some measurable level of popularity is needed before a non-compete clause will be enforced against a television or radio personality. For example, in *Clooney v. WCPO Television Division of Scripps-Howard Broadcasting Co.*, 300 N.E.2d 256, 258 (Ohio App. 1973), the court upheld an injunction against a television personality whose services were “special, unique, unusual and of an extraordinary artistic character.” On the other hand, the Supreme Court of Minnesota refused to enforce a covenant not to compete against a radio personality who was described by his employer as an “ordinary, if not less than ordinary, radio personality.” *Bennett v. Storz Broadcasting Co.*, 134 N.W.2d 892, 900 (Minn. 1965).

30 *Beckman* at 567.

31 *West Group* at 938, citing *Beckman* at 569.

32 *West Group* at 938.

33 *West Group* at 938-939.

34 *Beckman* at 569.

35 *T.K. Communications* at 485.

36 See *Superior Gearbox Co. v. Edwards*, 869 S.W.2d 239, 247 (Mo. Ct. App. 1993) (“If, after considering the restrictions imposed by a covenant, . . . we determine that they are unreasonably broad, we will modify those restrictions accordingly,” citing *Mid-States Paint & Chemical Co. v. Herr*, 746 S.W.2d 613, 616 (Mo. Ct. App. 1988); *Orchard Container Corp. v. Orchard*, 601 S.W.2d 299, 303-04 (Mo. Ct. App. 1980) (court modified geographic limits of non-compete) Missouri courts will modify time and geographic restrictions, but they do not strictly follow the “blue pencil” doctrine. *Mid-States* at 616. Under the blue pencil doctrine, if a restrictive covenant contains words which are unreasonable limitations and if stricken would leave a reasonable contract, the court may “blue pencil” or strike those words out, while if the contract contains no specifically expressed time or geographical limitations, the court may not write into the contract any such limitations, but must declare the entire provision void. *Mid-States* at 616.

37 *Cullman Broadcasting Co., Inc. v. Bosley*, 373 So.2d 830, 832 (Ala. 1979).

38 *Reed, Roberts Associates, Inc. v. Bailenson*, 537 S.W.2d 238, 240-1 (Mo. Ct. App. 1976).

39 *Showe-Time Video Rentals, Inc. v. Douglas*, 727 S.W.2d 426, 433 (Mo. Ct. App. 1987).

40 *Ashland Oil v. Tucker*, 768 S.W.2d 595, 601 (Mo. Ct. App. 1989).

41 *Nail Boutique*, 758 S.W.2d at 210.

42 *Ashland Oil, Inc. v. Tucker*, 768 S.W.2d 595, 601 (Mo. Ct. App. 1989).

43 *Computer Sales International, Inc. v. Collins*, 723 S.W.2d 450, 452 (Mo. Ct. App. 1986) (continuation of employment for 2-1/2 years after signing the restrictive covenant provides consideration for the covenant).

44 The meaning of good or just cause is discussed in *Superior Gearbox*, 869 S.W.2d at 244.

45 *Showe-Time*, 727 S.W.2d at 433.

46 Note that an at-will employee's signing of an employment contract for an indefinite term which contains a covenant not to compete does not convert at-will employment into employment terminable only for cause. See *Panther v. Mr. Good-Rents, Inc.*, 817 S.W.2d 1, 5 (Mo. Ct. App. 1991).

47 *Showe-Time*, at 434.

48 *Smith-Scharff Paper Co., Inc. v. Blum*, 813 S.W.2d 27, 28 (Mo. Ct. App. 1991) (employer barred from enforcing covenant after materially

breaching employment contract by converting method of payment from salary to commission only); *see also* *Forms Mfg., Inc. v. Edwards*, 705 S.W.2d 67, 69 (Mo. Ct. App. 1985) (“If company breached the employment agreement before employee allegedly violated the covenant not to compete, then company is barred from enforcing the restrictive covenant against employee”).

49 *Forms Mfg.*, at 69.

50 *McKnight v. Midwest Eye Inst. Of Kansas City, Inc.*, 799 S.W.2d 909, 915 (Mo. Ct. App. 1990) (*citing* *Stokes v. Enmark Collaborative*, 634 S.W.2d 571, 573 (Mo. Ct. App. 1982)).

51 *Forms Mfg.*, at 69-70.

52 *Osage Glass*, 693 S.W.2d at 75.

53 *Osage Glass*, at 75.

54 ME. Rev. Stat Ann. Tit. 26 §599 (1999); Mass. Gen. Laws ch. 149, §186 (1998); Ariz. Rev. Stat. §23-494 (2004); D.C. Code Ann. 32-532 (2005); 820 Ill. Comp. Stat. 17/10 (2005); NY Lab Code §202K.

55 www.aftra.com.