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Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial,

The Confusing Law Of Restrictive Covenants



Restrictive covenants in employment contracts, the most notorious of which is a non-compete agreement, typically limit workers' actions after leaving employment. Most states do not prohibit non-compete agreements as long as they are reasonable in purpose, time and scope, while California is part of a small minority of states (Montana, North Dakota and Oklahoma) that do not follow this general rule. California courts have held that "[e]mployee non-compete agreements are void in California even if they are reasonably limited in time and geographic scope." [Scott v. Snelling & Snelling, Inc.](#), first reported at 732 F. Supp. 1034, 1042-43 (N.D. Cal. 1990).

A 2015 California case concerning the enforceability of a settlement agreement containing a non-compete

contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

Accreditations



clause may have expanded the reach of California B & P Code § 16600. In [Golden v. California Emergency Physicians Medical Group](#), 782 F.3d 1083 (9th Cir. 2015), the parties, a plaintiff physician (Golden) alleging racial discrimination, and the defendant medical group, negotiated a settlement in open court that prohibited the doctor from working at emergency rooms owned or operated by the medical group. Later, Golden refused to sign the settlement agreement and attempted to avoid its enforcement, claiming the provision constituted an unlawful non-compete.

The District Court ruled in favor of the medical group and upheld the restriction in the settlement agreement. The court held that the settlement agreement provision was not a non-compete, and California B & P Code § 16600, which voids contracts that restrain parties from engaging in a lawful profession, was inapplicable. However, the Ninth Circuit overturned this ruling and held § 16600 is not limited to non-compete clauses, yet declined to say if the challenged clause was actually void. Instead it directed the lower court to re-examine the agreement and determine whether the provision constituted a substantial restraint on trade.

The Ninth Circuit interpreted § 16600 broadly and observed that the statute does not "specifically target covenants not to compete." Rather, it "voids every contract that 'restrain[s]' someone from engaging in a lawful profession, trade, or business." Further, the court found that the language and background of the statute "lend[] little support to construing Section 16600 much more narrowly - as simply a prohibition of agreements between employers and employees not to compete - than its plain language would otherwise suggest." Golden at 1090. The court also reasoned that California case law supports this proposition, stating that the California Supreme Court in [Edwards v. Arthur Andersen, LLP](#), Cal. Sup. Ct., 81 Cal. Rptr. 3d 282 (2008) identified the "crux of the inquiry under 16600" as

Directions



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Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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whether an agreement "imposes 'a restraint of a substantial character' regardless of 'the form in which it is cast.'" Golden at 1091.

Employers often use restrictive covenants in settlement and separation agreements with outgoing employees who promise to restrict their new employment in exchange for monetary compensation. The ruling in Golden suggests that this practice may not be effective because of the court's broad interpretation of § 16600. Some questions thus arise: What might an employer do to restrict employees post-employment? Does every non-compete constitute an unlawful restraint of trade, or can one be crafted that is not a "restraint of a substantial character"? If a non-compete is no longer a viable employer negotiation tool, how will this affect settlement agreements or separation agreements between employers and employees?

Keeping current on the evolving world of employment law, especially issues such as restrictive covenants and non-compete agreements, requires the advice of a knowledgeable labor and employment law attorney. Schedule a free consultation with Nancy Gray to help protect your rights under both California and federal law. Call (310) 452-1211 or visit www.grayfirm.com today.

- Entertainment law

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