

Litigation Team Scores Win in Court of Appeals

David Fox and John Zaloom, with an assist from Justice Whichard, scored a victory in the North Carolina Court of Appeals on July 20.

In February, a Wake County trial judge entered an injunction in favor of MJM Investigations and against MVA's clients, Brian Sjostedt and Vetted International, for their performing services for clients in violation of a non-compete covenant. Fox and Zaloom argued that the covenant was overbroad and unenforceable and therefore could not restrict our clients from competing for the same clients as MJM. The trial judge agreed that the covenant was overbroad, but he modified it under North Carolina's version of the "blue pencil" rule and entered an injunction based on the modified covenant.

The North Carolina Court of Appeals reversed the trial judge's order. In agreement with the MVA attorneys' position, the Court of Appeals held that:

- The modified covenant was vague and unenforceable because it restricted competition for "current" or "prospect clients" without defining either term.
- It was overbroad because it covered "clients" and "prospect clients" with which Defendants had never made contact.
- The trial judge's wholesale adoption of a "client" list that included over 800 entities, which MJM had substituted for its list of 42 clients the day before the trial judge entered his preliminary injunction order, constituted improper modification of the non-solicitation clause.
- When the trial judge "blue-penciled" the agreement, it struck the entire first sentence, which was the only part of the covenant that had a time restriction. Because the remaining covenant included no time restriction, it was unenforceable.

The three-judge panel voted unanimously to reverse the injunction order.