

The Journal of the Michigan Dental Association

Volume 106 | Number 10

Article 6

10-1-2024

Dentistry and the Law: Update on the FTC's Rule Banning Covenants Not to Compete

Daniel Schulte JD
Michigan Dental Association

Follow this and additional works at: <https://commons.ada.org/journalmichigandentalassociation>



Part of the [Dental Public Health and Education Commons](#), [Health Law and Policy Commons](#), [Human Resources Management Commons](#), and the [Leadership Commons](#)

Recommended Citation

Schulte, Daniel JD (2024) "Dentistry and the Law: Update on the FTC's Rule Banning Covenants Not to Compete," *The Journal of the Michigan Dental Association*: Vol. 106: No. 10, Article 6.

Available at: <https://commons.ada.org/journalmichigandentalassociation/vol106/iss10/6>

This Monthly Departments is brought to you for free and open access by the State & Local Dental Publications at ADACOMMONS. It has been accepted for inclusion in The Journal of the Michigan Dental Association by an authorized editor of ADACOMMONS. For more information, please contact commons@ada.org.



By Dan Schulte, JD
MDA Legal Counsel

Update on the FTC's Rule Banning Covenants Not to Compete

Question: What has happened in the litigation over the Federal Trade Commission's ban on covenants not to compete? Will the rule go into effect?

And, if it does go into effect, when will that be?

Answer: This is an update to my column in the June MDA *Journal*. That column described how the FTC issued a Final Rule which would ban the entering into or enforcement of most employee noncompetition agreements. This ban was scheduled to take effect on Sept. 4, 2024. However, the ban never took effect due to several court cases challenging the authority of the FTC to ban covenants not to compete.

The legal arguments advanced by those involved in the litigation are complicated and have resulted in conflicting decisions that are impossible to reconcile. I'll give a brief summary of the court decisions made as of this writing below. Where this stands currently is that the ban on covenants not to compete has not and will not become effective until and unless a federal appellate court decides that the FTC had the authority to enact the Final Rule.

First, on July 23, 2024, a federal district court in Pennsylvania ruled in favor of the FTC, finding that pursuant to the Federal Trade Commission Act the FTC has the power to "prevent unfair methods of competition in commerce" including preventing the enforcement of covenant not to compete agreements. The plaintiff (a business with covenants not to compete with many of its employees) in that case sought an injunction preventing the Final Rule from going into effect. The court denied the requested injunction, finding that the plaintiff was unlikely to be able to prove that the FTC exceeded its authority or that Congress had unconstitutionally delegated legislative authority to the FTC.

Then, on Aug. 20, 2024, a federal district court in Texas considering the same question reached the opposite result. It found that the Federal Trade Commission Act

The legal arguments advanced by those involved in the litigation are complicated and have resulted in conflicting decisions that are impossible to reconcile. The only thing that is clear is that the question of whether covenants not to compete will be banned will be pending for quite some time.

did not give the FTC authority to promulgate the Final Rule banning covenants not to compete. Going further, the Texas court found that the Final Rule was arbitrary and capricious. Ultimately, the court set aside the FTC's ban on covenants not to compete and ordered that it shall not be enforced or otherwise take effect on Sept. 4, 2024, or any other later date.

As of this writing, appeals have not been filed in either the Pennsylvania or Texas cases. Whether appeals will be filed, how an appellate court will view the lower court decisions, and how the results of the presidential election will affect the FTC's continued pursuit of the ban all remain to be seen. Appeals at the federal level typically take a year or more. The only thing that is clear is that the question of whether covenants not to compete will be banned will be pending for quite some time. ●

*Past "Dentistry and the Law" columns appear on the MDA website at michigandental.org/Legal-Services. You may also order a free download of Dan Schulte's book, *Most-Asked Legal Questions*, at store.michigandental.org.*