

# MEMORANDUM

2100 Q11

To: Walter Post

From: Applicant

Date: February 22, 2000

Re: Application Specialist, Inc. / Maria Pedroza

In your memorandum dated February 22, 2000

you requested that I prepare a memorandum

analyzing which State's law the Franklin

District Court will apply under the facts of our

case - the law of Franklin or Olympia. In addition,

you requested that I analyze what the likely

outcome will be on the issue of enforceability

of the non-competition agreement signed by

Maria Pedroza and A. E. Attles & Associates (SE) in Millertown, Olympia. I have researched relevant state law in Olympia and Franklin and the Restatement (Second) of Conflict of Laws.

### Issues & Short Answers

Issue No. 1: What state law will the Franklin District Court apply under the facts of our case?

Answer No. 1: Franklin state law will prevail.

Issue No. 2: What is the likely outcome of the issue of the enforceability of the non-competition agreement?

Answer No. 2: Likely, the non-competition agreement will not be enforced under Franklin laws.

## Analysis

In Music Makers, our state supreme court outlined the appropriate analysis for a resolution of a conflict of laws issue in any case before the Franklin state courts. My analysis of the conflict of law issue follows this analytical framework.

The initial inquiry in a conflict of law case is to determine whether there is, in fact, a conflict. Franklin applies the rule of law that "there is a conflict when a different outcome would result under the two laws or where each state has an interest in applying its own law."

Music Makers.

Here, there is an actual conflict

each state because <sup>✓</sup> Franklin and Olympia <sup>has its</sup> have their own interests in applying its own law." Music Makers.

The law of Olympia does not forbid the use of employee non-competition agreements with their employers "as long as the restrictions are reasonable."

Tree Doctor. Olympian law is based on the judicially m. policy that "employers have a legitimate interest in protecting the customer contacts they have been able to develop." Tree Doctor. The law of Franklin,

on the other hand, holds that any noncompetition agreement which prevents "an employee from working for a competitor after the termination of his employment or imposing a penalty if he does so" is void. McGill

This principal is adopted in the Franklin Fair Business Act as well as in its common law.

To determine the enforceability of choice-of-law provisions Franklin courts apply the "governmental interest analysis" set forth in the Restatement

(Second) of Conflict of Laws §187.

The Franklin Courts provide that the governmental-interest analysis applies to arms-length contractual

choice-of-law provisions. There is some evidence in

Mania Pedroza's deposition that indicates that

Ms. Pedroza did not have much of a choice in

signing the non-competition agreement if she wanted

to be an employee of SEA. I do not think that

we should pursue this line of reasoning at the present time, however, because of the strong policy favoring enforcement of choice-of-law provisions. See Music Makos.

Briefly stated the correct approach under Restatement § 187(2) is for the Franklin district court to determine first "whether the chosen state has a substantial relationship to the parties or their transaction, or ... whether there is any other reasonable basis for the parties' choice of law."

If neither of these tests are satisfied, the Franklin court will not enforce the choice-of-law provision.

Alternatively, if either test is satisfied, the district court will next determine whether the chosen state's choice of law, here Olympia, is contrary to a "fundamental policy" of the State of Franklin. Again, if there is no conflict the court will enforce the parties' choice of law.

However, if there is a "fundamental conflict", the court will then determine if Franklin has a materially greater interest than the chosen state in determining a particular question. If Franklin's interest is materially greater, the choice of law provision will not be enforced because the Franklin court will not enforce a foreign

state's law that is contrary to Franklin's "fundamental policy." The Franklin courts will not conduct an independent analysis under a "most significant relationship test" as required under Restatement § 187. See Music Makers.

Applying the above test to the facts of this case, obtains the following:

Substantial relationship on reasonable basis.

Under the first requirement Olympia clearly has a substantial relationship. SEA is incorporated in Olympia and also has its headquarters located in that state. The employment non-compete agreement was negotiated and executed in



Olympia. Ms. Peraza also worked out of SEA's office in Olympia and was a resident of Olympia.

### Contrary to Fundamental Policy of Franklin.

Franklin has a policy requiring the application of Franklin law to Ms. Peroza's contract. Franklin law, common and statutory, provides that noncomplete agreements are void as contrary to public policy. Section 600 is a "strong public policy" of the state of Franklin that should not be diluted by "judicial fiat."

McGill. Accordingly, the second exception to Rule of §187 does apply.

Materially greater interest than the chosen state.

Franklin does have a materially greater interest than Olympia in the determination of the noncompete agreement. As indicated in dicta in Music Makers freedom to contract for terms of employment would predominate over the law of Olympia. Ms. Peroza has accepted a position with ASI a Franklin corporation, she has also relocated to Franklin and is now a Franklin resident. The Franklin court will very likely conclude that it has a materially greater interest in enforcing the laws of Franklin because it concerns a matter of

fundamental policy of both ASI and Peroga are residents of its state.

In sum, I think it is highly likely Franklin law will apply and the Franklin courts will not enforce the noncompete agreement.

If, however, Franklin law does not apply

there may still be another avenue under

Olympia law regarding the "reasonableness" of

the agreement. However, I will save this

analysis for another day should the issue

later arise.