

PRESENTED AT

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**Non-Compete Litigation and Related Ethical
Considerations from the Perspective of the
Employee Lawyer**

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I. Considerations in Determining whether to Represent and in Initiating Representation

A. Careful Examination of the Conduct of the Employee

1. Did the employee do what the former employer is alleging she did?
2. The flip side: Must consider what the employee may have done that arguably violates the agreement and of which former employer has no knowledge. What are the lawyer's obligations and what should be their ethical best practice?

B. Potential Conflicts in Representation of both Employee and New Employer.

Lawyer represented employee and new employer in case wherein employee was alleged to have violated non-compete, non-disclosure and confidentiality of information provisions. Employee had taken documents and information designated as confidential. Employee destroyed the documents during pendency of temporary restraining order. Ethical best practice is to have the employee get separate representation.

Also available as part of the eCourse

[Ethics of Representation in Non-Compete Agreements](#)

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"Representing the Individual"