

EXHIBIT 1
The Balancing Test Applied to Accountants

Legitimate Business Interests	Factors	Harm to Employee and Public
Client relationships created and maintained at the employer's expense and acquired by the employee through direct, substantial assignment of accounting services in the course of employment.	Clients	Client relationships developed by the employee prior to work, or through independent efforts not paid for by the employer, or connected with work assignments.
Employers have a legitimate interest in protecting trade secrets and confidential information.	Confidential information	Trade secrets and confidential information are often debatable. If the employee brought the information, or if it is public, it is not protected.
A few courts allow employers to protect themselves against former employees who had unique skills.	Unique skills or training	Some courts look to see if the employer provided the training to acquire the unique skills.
The time limit is a brief interlude that permits the firm only to replace the goodwill and clients acquired by the former employee.	Time limits	Lengthy time periods are too harsh on the employee and not necessary for the employer's protection.
Not all courts require a geographic restriction when the agreement is limited to services to clients. If a geographic area is required, it must be limited to a reasonable size where the employer does business.	Geography	If the area is too broad, this prevents relocating to find suitable work. If the accounting services would not otherwise be available in the area, this would harm the public.
Courts tend to favor noncompete clauses that allow the employee to pay a reimbursement fee to a former employer for the loss of business. A formula based on one a third party would use to buy the practice provides an objective measure.	Reimbursement or liquidated damages	Many states, like New York, will test the reimbursement fee as both a valid noncompete and a valid damages clause. A fee that is unreasonable will be unenforceable. Many courts also require that the final damages not be an excessive penalty as compared to actual damages incurred.
Signing a noncompete clause for a promotion, salary increase, or ownership stake is generally considered a valid, bargained-for consideration, but courts differ as to whether initial employment or continued employment is sufficient consideration.	The exchange	Courts give strong protection when the noncompete clause is signed as part of a practice purchase. If an employee signs at the time of initial employment, many courts find this is valid, but a few, like New York, weigh this against the employer. Any firm misconduct in the initial signing or termination process could make the agreement unenforceable.