



The Firm is pleased to announce it has been named in the 2019 edition of U.S. News – Best Lawyers®. The Firm was recognized for work in its appellate practice, commercial litigation, and trusts & estates litigation.

The “Best Law Firms” ranking is based on a combination of client feedback, information provided to the publication through the Law Firm Survey and Law Firm Leaders Survey, and through Best Lawyers in America. Law firms are eligible for the Best Lawyers “Best Law Firms” list when at least one attorney within a firm has been listed in Best Lawyers in America. Mark A. Hutchison, founding partner of Hutchison & Steffen, John T. Steffen, managing partner of the Firm, and A. Kent Greene, of counsel with the Firm, were named in the 2019 edition of The Best Lawyers in America. ■



Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking any action on matters covered by this newsletter. Nothing herein should be construed to create or offer the existence of an attorney-client relationship.

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HUTCHISON & STEFFEN

ATTORNEYS

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PECCOLE PROFESSIONAL PARK

10080 WEST ALTA DRIVE, SUITE 200

LAS VEGAS, NEVADA 89145

HUTCHLEGAL.COM

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PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500

500 DAMONTE RANCH PKWY., SUITE 980
RENO, NEVADA 89521
775.853.8746

895 TAHOE BLVD.
INCLINE VILLAGE, NEVADA 89451
775.853.8746



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MESSAGE
FROM
MARK A.
HUTCHISON



WILL YOUR NON-
COMPETITION
AGREEMENT
STAND UP TO A
CHALLENGE?



WHEN YOU
SHOULD
MEDIATE A
LEGAL DISPUTE

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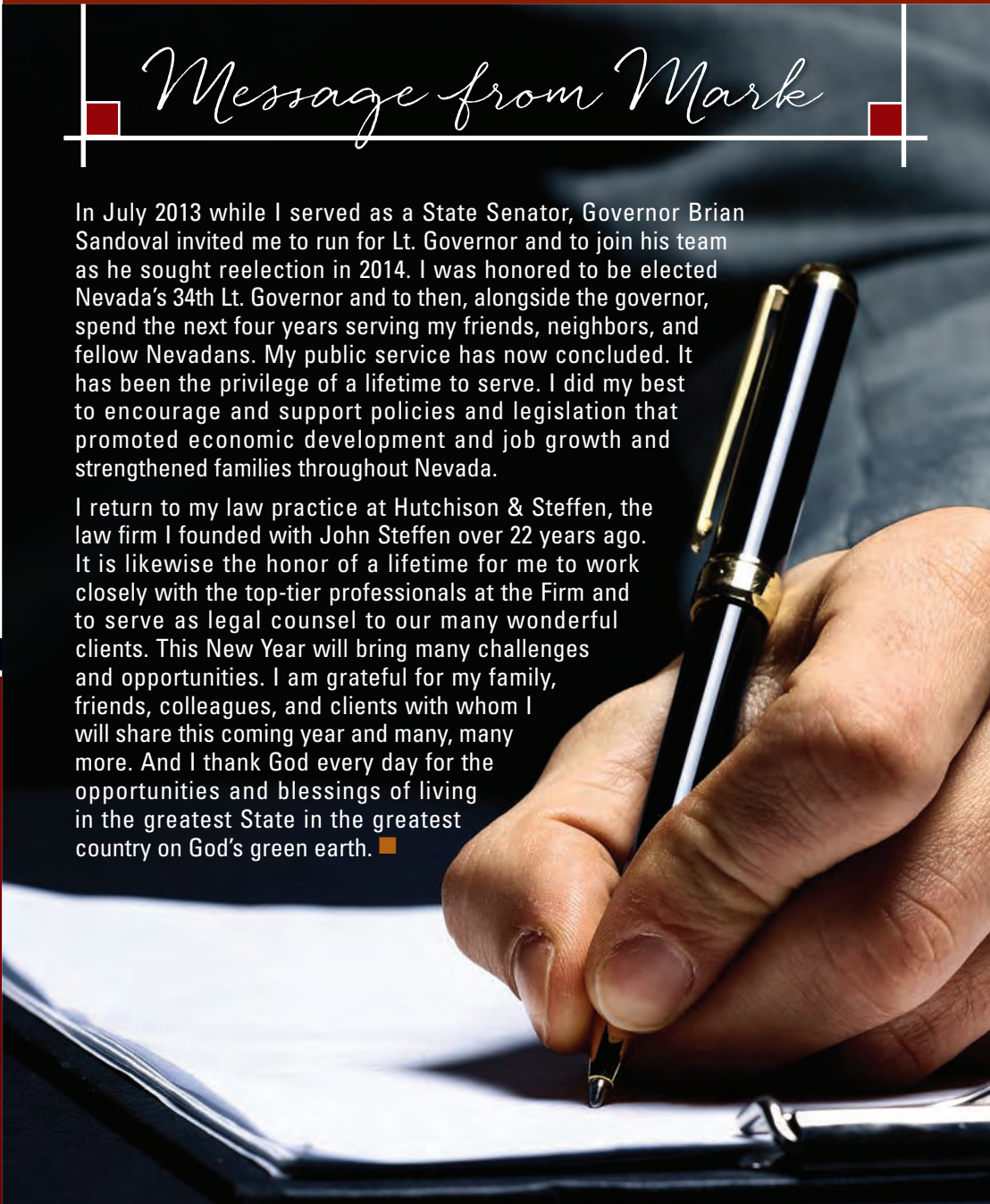
Legal Matters

WINTER 2019

Message from Mark

In July 2013 while I served as a State Senator, Governor Brian Sandoval invited me to run for Lt. Governor and to join his team as he sought reelection in 2014. I was honored to be elected Nevada's 34th Lt. Governor and to then, alongside the governor, spend the next four years serving my friends, neighbors, and fellow Nevadans. My public service has now concluded. It has been the privilege of a lifetime to serve. I did my best to encourage and support policies and legislation that promoted economic development and job growth and strengthened families throughout Nevada.

I return to my law practice at Hutchison & Steffen, the law firm I founded with John Steffen over 22 years ago. It is likewise the honor of a lifetime for me to work closely with the top-tier professionals at the Firm and to serve as legal counsel to our many wonderful clients. This New Year will bring many challenges and opportunities. I am grateful for my family, friends, colleagues, and clients with whom I will share this coming year and many, many more. And I thank God every day for the opportunities and blessings of living in the greatest State in the greatest country on God's green earth. ■





Will Your NON- COMPETITION AGREEMENT Stand Up to a Challenge?

by Sandra S. Robertson



In the last two years, Nevada courts and the Nevada legislature have made significant decisions regarding non-competition agreements. It is well known that courts view non-competition agreements with a higher degree of scrutiny than other kinds of agreements because of the seriousness of restricting an individual's ability to earn an income. Only restrictions that are reasonably necessary to protect the business and good will of the employer will be enforceable.

So, how do you know if your non-competition agreement will stand up to a challenge? Evaluate your non-competition agreement with the following questions in mind:

Is your agreement supported by valuable and appropriate consideration? In other words, have you given the employee something valuable in exchange for the employee signing the agreement? Depending on the circumstances, this "something valuable" could be initial employment, continued employment, or a change in the terms or conditions of employment.

Does your agreement have a reasonable time limit? Courts will evaluate the specific facts regarding your business to determine what is reasonable. In general, an agreement that restricts an employee's ability to earn an income for 1-2 years is likely to be viewed more favorably than an agreement that imposes a 5-year restriction.

Does your agreement have a reasonable geographic scope? The geographical scope of a restriction must be limited to only the areas where the employer can provide evidence of established business interests, i.e., areas where the employer has established customer contacts and good will.

Courts will closely scrutinize evidence of those business interests and, generally, restrictions that are phrased in terms of miles will be more well-received than those phrased in terms of states. The Nevada Supreme Court has held that doing business in 33 states does not justify a nation-wide restriction, and has suggested that doing business in one city does not justify a state-wide restriction.

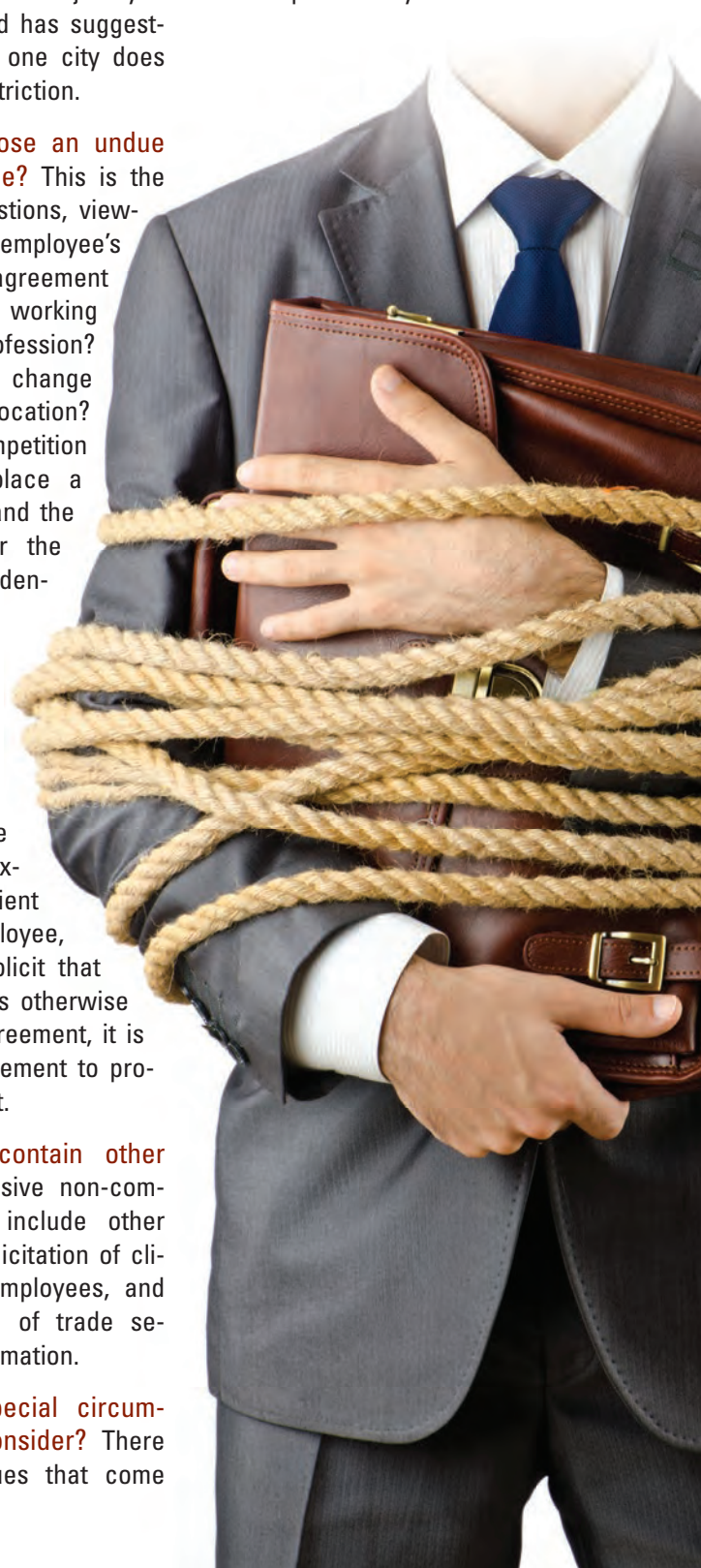
Does the restriction impose an undue hardship on the employee? This is the flip-side of the above questions, viewing the matter from the employee's perspective. Does the agreement prohibit the employee from working in his or her chosen profession? Require the employee to change professions? Require relocation? Arguably, any non-competition agreement is going to place a burden on the employee, and the focus should be whether the restraint is excessively burdensome.

Does your agreement prohibit a former employee from providing service to a client who chooses to follow the employee? A new law that became effective in June of 2017 expressly states that if a client chooses to follow the employee, the employee does not solicit that client, and the employee is otherwise in compliance with the agreement, it is not a violation of the agreement to provide services for that client.

Does your agreement contain other provisions? A comprehensive non-competition agreement may include other provisions such as non-solicitation of clients, non-solicitation of employees, and prohibitions on disclosure of trade secrets and confidential information.

Are there any other special circumstances you need to consider? There are a host of other issues that come

up related to drafting and enforcement of non-competition agreements. Take care to consider special circumstances your business may be facing, such as a reduction in force, reorganization, restructuring, asset sale, or other circumstance specific to your business. ■



WHEN YOU SHOULD MEDIATE A LEGAL DISPUTE



If your business is involved in a legal dispute, you may voluntarily agree or be required to participate in mediation. Mediation is an alternative way of settling disputes that involves negotiation with support from a neutral third-party.

Typically, mediation involves key decision makers from each party, as well as their legal counsel. The mediator begins by leading the parties through a confidential review of the situation at hand. Then, depending on the nature of the conflict, the mediator may place each party in separate rooms and act as a go-between to facilitate a jointly-agreeable resolution.

Advocates for mediation argue that it creates cooperative resolutions, opens the door to more innovative solutions, and may even help preserve certain business relationships. What's more, mediation can provide significant costs savings over a lengthy litigation process.

Consult your attorney about when to mediate. Ask your counsel to help you understand your opponent's potential legal standing and to provide a cost estimate of taking the case forward through the court system.

While entering mediation early in a conflict may save money, litigation is sometimes an essential part of the fact-finding process. Furthermore, litigation may reveal valuable information for (or against) your position.

You and the opposing party may agree to enter mediation at any time in the legal process. The mediation process is non-binding, and if the parties cannot come to a resolution, your case may return to standard legal procedures. Mediation is distinct from arbitration, where an arbitrator reviews your case and makes a binding ruling. ■

