



Supreme Court Reverses Appellate Division Judgment and Upholds Law Firm's Retirement Plan in Case Brought by Former Partner

The Supreme Court of New Jersey held in Robert D. Borteck v. Riker, Danzig, Scherer, Hyland & Perretti LLP (A-31-03) that Riker Danzig's partnership agreement sufficiently operates as a retirement plan and is therefore enforceable against Borteck, a former partner of Riker Danzig who left the firm at age 53 after 11 years with the firm for a competing law firm. Riker Danzig's retirement plan includes a minimum retirement age of 55 except for those who leave for public service. The case, which was decided in favor of Borteck in the lower courts, has enormous implications for law firms in New Jersey and across the country that invest capital in partnership retirement plans.

Because Borteck did not meet the minimum retirement age, and had moved to a competing firm and, therefore, was not "retired," he was not entitled to retirement benefits under Riker Danzig's partnership agreement, which requires that a partner be retired from the private practice of law to receive benefits.

Riker Danzig managing partner Glenn A. Clark successfully argued before the Supreme Court that a law firm has the right to constrain partners from receiving retirement benefits if they leave the firm to practice in a competing law firm. Borteck had asserted that Riker Danzig's retirement provisions did not constitute a bona fide retirement plan, and therefore the language in the partnership agreement restricting private practice was anti-competitive in nature and violated the Rules of Professional Conduct.

In finding that the partnership agreement includes all the normal indicia of a retirement plan within the contemplation of RPC 5.6, the Supreme Court determined that the retirement exception acts as a "safe harbor" in setting forth age requirements and conditions concerning the private practice of law upon leaving the firm. Riker Danzig was justified, therefore, in disallowing retirement benefits to Borteck.

Clark notes, "The Supreme Court's decision is a victory not only for Riker Danzig, but for all law firms that intend

to provide a quality lifestyle for their partners as they retire from the practice of law. Law firms must retain the ability to administer their retirement plans for the benefit of partners who have actually retired. Otherwise, firms would be forced to subsidize a "retiring" partner who has taken clients and joined another firm. This is not a restriction on their ability to practice law; it's simply an acknowledgement that the purpose of a retirement fund is not to pay a benefit to someone who is not retiring but competing against their former firm."

The trial court had previously granted Borteck's motion for summary judgment, and on appeal, the Appellate Division affirmed.

The Supreme Court has remanded the matter to the trial court for resolution of Riker Danzig's counterclaims against Borteck.