

How Courts Treat Nonservice Clauses For Financial Advisers

By **Andrew Shedlock** (October 29, 2025)

An intimidating contractual provision that financial advisers face is the nonservice or nonacceptance provision, whereby the firm that currently employs the adviser tries to limit the departing adviser from accepting or servicing clients that the adviser serviced at his or her former firm.

Common clauses might prohibit an adviser from "accepting" business from former clients, or "servicing" or "working with" former clients.

Certain non-Financial Industry Regulatory Authority member firms and registered investment advisers include these nonservice provisions in almost all of their financial adviser agreements, and other registered investment advisers have started using them.



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Nonsolicitation clauses are prevalent, but these nonservice provisions present stark challenges for advisers since, in many people's view (including my own) they seek to restrict and prevent advisers from working with clients that want to work with the adviser, even where there is no evidence of solicitation. Unfortunately, many courts do not blanketly prohibit these provisions.

Below, I briefly highlight a handful of recent cases that analyzed the nonservice issue — not all of which are in the financial adviser space.

For counsel litigating nonacceptance clauses, courts that have considered public policy arguments seem to invalidate these clauses more often than courts that solely consider the bargained-for terms of the contracts and controlling state law precedent.

Thus, in states where there is no precedent where a court has invalidated similar provisions and where public policy arguments are rejected, these types of clauses are more likely to be upheld.

Selected Cases Upholding Nonservice and Nonacceptance Provisions

Choreo

In the ongoing *Choreo LLC v. Lora* case in the U.S. District Court for the Southern District of Iowa, a team of advisers departed a firm, and the departing firm sought to enforce nonservice and nonacceptance provisions against the departing team.

The *Choreo* court in April rejected the advisers' attempts to invalidate nonservice provisions on public policy and regulatory grounds:

Defendants argue the non-service provisions in the Individual Defendants' employee agreements are void in violation of public policy. This challenge must be rejected for two primary reasons. First, they have failed to identify any compelling Minnesota precedent supporting their position that non-service provisions violate public policy. Second, their attempt to cobble together a public policy argument from regulatory sources fails to overcome the clear contractual language. These deficiencies are fatal to their defense.[1]

Notably, the Choreo court held that the advisers failed to identify any Minnesota case law that supported their position that nonservice provisions violate public policy.

When the advisers made arguments that "[U.S. Securities and Exchange Commission] regulations and policy" are in favor of allowing clients to freely choose their financial advisers, the court noted that the market is essentially flooded with financial advisers that can offer the same or similar services to these same clients.[2]

Finally, the Choreo court held that although

client choice merits consideration in appropriate contexts, such general policy concerns cannot override specific contractual commitments absent clear direction from the Minnesota legislature or judiciary. The mere suggestion that clients might prefer unrestricted access to particular advisors — without empirical support or recognition of countervailing interests in contractual stability — provides no basis for judicial invalidation of the provisions at issue.[3]

In order to invalidate a nonservice provision under Minnesota law, the adviser and counsel should be able to point to decisions applying Minnesota law holding nonservice and nonacceptance provisions invalid or unenforceable.

Arguments regarding public policy and client choice may not prevail in a state that lacks that specific precedent.

Here's a bonus Minnesota law analysis: Not all appears settled under Minnesota law on this issue.

In a motion to dismiss opinion issued a few months before Choreo, U.S. District Court for the District of Minnesota Chief Judge Patrick Schiltz in *Ballast Advisors LLC v. Peterson* considered arguments by departing financial advisers that their nonsolicitation agreements prohibited them from "accepting [firm] clients who approach [the advisor] on their own initiative- that is, without prompting from [the advisor]-thereby depriving [firm] clients of the right to work with the financial advisor of their choice." [4]

In a footnote, Judge Schiltz wrote that nonservice provisions were a "major concern." [5]

The court reasoned that because clients develop long-standing relationships with their financial advisers, there is a "strong argument" that "contractual restrictions that interfere with a client's ability to continue to seek financial, medical or legal advice from her longtime financial advisor, doctor, or lawyer should be invalid as against public policy." [6]

Thus, if this reasoning is widely adopted, the lack of solicitation by the departing advisers, combined with strong arguments for client choice, could persuade more courts to invalidate or limit nonservice provisions.

Aitkin

In *Aitkin v. USI Insurance Services*, applying Oregon law, the U.S. District Court for the District of Oregon in 2022 upheld the enforceability of a nonacceptance of business clause.[7]

The employee seeking to invalidate the nonacceptance clause in *Aitkin* cited to a 2005

Suffolk County Superior Court of Massachusetts opinion, *Getman v. USI Holdings*, as support for invalidating the nonacceptance clause, because "the court in [Getman] noted that the non-solicitation clause should not 'bar [the employee] from accepting insurance business from his former [employer's] clients if, without his solicitation of their business, they wish him to continue ... to service their insurance needs.'"[8]

The Aitkin court rejected the employee's reasoning, writing that, thus

Plaintiff's argument that Defendants [employer] have no protectable interest in the personal goodwill he developed with his clients fails under Oregon law. Defendants have a sufficient protectable interest in their established business relationship with Plaintiff's former clients that justifies prohibiting Plaintiff from accepting or servicing the business of those clients.[9]

Practitioners should be wary of trying to win arguments on nonservice issues by citing to noncontrolling precedent, especially cases from other states that contradict binding state law.

Selected Cases Invalidating Nonservice and Nonacceptance Provisions

Hribar Transport

Hribar Transport LLC v. Michael Slegers, a recent case from the U.S. District Court for the Eastern District of Wisconsin, applying Indiana law, invalidated a nonservice clause in an employment contract because the potential prohibited customers that the defendant allegedly could not service were "not defined and are susceptible to multiple interpretations," the court wrote in September.[10]

In the trucking and hauling context, the nonservice provision at issue stated that the former employee may not "[p]erform any trucking, hauling or transportation services for a Customer." [11] The court noted that the terms "transportation services" and "customer" were not defined.[12]

Thus, the court found that the nonservice provision was "overbroad and impermissibly vague" and, therefore, it was "unreasonable as written." [13]

Unlike other cases invalidating nonservice provisions because they were unreasonable restraints of trade or violative of public policy, the *Hribar Transport* court concluded that the nonservice provision was broad and vague.

While courts usually apply overbreadth and vagueness analysis to the scope of nonsolicits and noncompetes, practitioners should understand that these same textual arguments can be effectively applied to invalidate nonservice provisions.

Insure Idaho

Although not a case invalidating, per se, a nonservice clause, the July Idaho Supreme Court decision in *Insure Idaho LLC v. Horn* lends credence to arguments that acceptance of unsolicited business should be permissible.

The court analyzed whether solicitation occurred when a former employee of an insurance agency received incoming communications from former clients and accepted their business.[14]

The court held that "the mere acceptance of business, without more, does not fall within the plain meaning of solicitation." The court reasoned that "[a]ccepting business and soliciting business are two different things; and not all communication is a solicitation."

Decisions like *Insure Idaho* will prove helpful to departing employees, since an adviser's "mere acceptance of business, without more" does not demonstrate solicitation.[15]

USI Insurance Services

In *USI Insurance Services LLC v. Alliant Insurance Services Inc.*, in the U.S. District Court for the District of Arizona, Alliant and the departing employees argued that the nonservice provisions were "unreasonable, and thus unenforceable, because it prohibits the Individual Defendants from accepting or servicing any client after joining Alliant, even if they never solicited the client." [16]

Alliant and the departing advisers further argued that "an interest in protecting customer relationships under the [nonservice] provision does not justify the restraint on the free-market and a client's ability to choose a provider." [17]

The Alliant court in April agreed with this public policy argument, finding that restrictions on acceptance or service of unsolicited business operated as an "unfettered restraint on the public by effectively denying a client the ability to choose the desired provider for two years." [18]

The court also noted that a "client may choose to pursue the Individual Defendants at Alliant for any number of reasons, even if USI has demonstrated it can effectively service the account, but the provision impedes exercising that choice. Therefore, the Court finds the provision unreasonably harms the public, and thus unenforceable." [19]

In a state like Arizona that seems to embrace public policy arguments, practitioners would be wise to attempt to defeat nonservice clauses using these types of arguments.

Aon

In *Aon PLC v. Alliant Insurance Services Inc.*, the U.S. District Court for the District of Illinois in 2023 considered nonservice provisions related to insurance policy brokering.

The Aon court embraced public policy arguments and held that "[n]on-servicing and non-acceptance restrictions that purport to bar employees from responding to unsolicited inquiries from customers pose unwarranted hardships on both the former employee and customers and are therefore contrary to Illinois public policy." [20]

In invalidating these provisions, the court cited to cases that refused to enforce restrictive covenants to "bar a former employee from responding to unsolicited requests for bids" and cases holding that employers cannot "prohibit [the former employee] from developing prospective business opportunity that came their way through no fault of theirs." [21]

Cases like *Aon* and *Diodato*, below, show that while departing employees can invalidate nonservice provisions on public policy grounds, the lack of solicitation is always a key factor.

Lack of evidence of solicitation of any kind will always help departing employees persuade courts that challenged contractual clauses are invalid.

Diodato

Like the Alliant court, the U.S. District Court for the Middle District of Pennsylvania in 2014 in *Diodato v. Wells Fargo Insurance Services USA Inc.* found that the relevant nonservice provision "unreasonably restrains" the employees' ability to earn a living following his termination but "more broadly restrains free trade." [22]

The court found that this nonservice provision purports to "restrict the liberty of third parties who, of their own volition, unilaterally seek [employee's] services." [23]

Litigators challenging nonservice clauses in states that embrace public policy arguments should cite, where appropriate, to the absence of solicitation by the departing employee and to precedent establishing a customer's right to choose with whom to work.

Conclusion

Advisers must understand what controlling state law holds about nonservice and nonacceptance provisions, specifically whether public policy arguments are effective at invalidating these clauses or whether state precedent rejects those type of extra-contractual arguments.

Employees considering a job change and their counsel need to carefully consider state law — up to and including recent opinions issued the past few months — to prepare for likely legal risks and challenges from former firms.

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[1] *Choreo LLC v. Lora et al.*, 777 F. Supp. 3d at 963.

[2] *Id.*

[3] *Id.* at 962.

[4] *Ballast Advisors LLC v. Peterson et al.*, No. 23-CV-3769 (PJS/TNL), 2024 WL 5075600, at *3 (D. Minn. Dec. 11, 2024).

[5] *Ballast Advisors LLC*, 2024 WL 5075600, at *3, n.4 (D. Minn. Dec. 11, 2024).

[6] *Id.*

[7] *Aitkin v. USI Ins. Servs. LLC*, 607 F. Supp. 3d 1126 (D. Or. 2022).

[8] *Aitkin*, 607 F.Supp.3d at 1142.

[9] *Id.* at 1143.

[10] Hribar Transport LLC, v. Michael Slegers, 2025 WL 2780234, at *15 (E.D. Wis. Sept. 30, 2025).

[11] Id.

[12] Id.

[13] Id. at *16.

[14] Insure Idaho LLC v. Horn, 572 P.3d 183, 196 (Id. 2025).

[15] Id. at 196.

[16] USI Ins. Servs. LLC v. Alliant Ins. Servs. Inc., No. CV-23-00192-PHX-SMB, 2025 WL 1179412, at *12 (D. Ariz. Apr. 23, 2025).

[17] Id.

[18] Id. at *13.

[19] Id.

[20] Aon PLC v. Alliant Ins. Servs. Inc., 2023 WL 3914886, at *10 (N.D. Ill. June 9, 2023).

[21] Id. at *9 (citations omitted).

[22] Diodato v. Wells Fargo Ins. Servs., USA Inc., 44 F. Supp. 3d 541, 569-570 (M.D. Pa. 2014).

[23] Id. at 570.