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# LinkedIn invite didn't violate noncompete

## Panel: Connecting with old co-workers isn't recruiting them

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In a ruling that broke new legal ground Monday, a state appeals panel found that connecting with a former colleague on a social media platform is not enough to violate a noncompete agreement.

The 1st District Appellate Court upheld the summary judgment granted to Gregory P. Gelineau, who was sued by Bankers Life and Casualty Co. for allegedly trying to recruit other Bankers Life employees from the Warwick, R.I., area.

This makes legal precedent out of an unpublished Rule 23 order issued in the case on June 26. Catherine A. Basque Weiler, a partner at Swanson, Martin & Bell LLP and one of Gelineau's attorneys, argued in a July 14 motion to publish that the panel's decision is actually a case of first impression.

"As social networking websites continue to grow and their use becomes more ubiquitous, this is an issue which may repeatedly arise in litigation over nonsolicitation agreements," Weiler wrote. "Yet, Bankers' arguments have not been addressed in a published opinion from any Illinois court of appeal."

Gelineau's noncompete agreement with Bankers Life forbade him recruiting former co-workers and customers within the territory he serviced for up to two years after leaving the company.

Gelineau left Bankers Life in January 2015 and was hired by a competitor, American Senior Benefits LLC.

Sometime between January and August 2015, Gelineau updated his LinkedIn page to reflect his new job. He also posted a job announcement on his page, and he invited three employees from Warwick, R.I. — the territory he serviced at Bankers Life — to connect with him.

Seven months later, Bankers Life sued the new employer, Gelineau and at least five other defendants accusing them of violating their restrictive covenants with Bankers Life in some way. This particular appeal deals only with Gelineau.

The 1st District panel's ruling centered around the substance of the messages Gelineau sent to three employees who worked in Rhode Island.

Bankers Life said Gelineau sent the employees requests to connect, and once they did, they would be directed to a job posting on his webpage.

But Gelineau said his invitations to connect were generic enough to the point that they could not be construed as part of a directed recruitment effort toward certain Bankers Life employees.

The 1st District panel agreed with Gelineau, finding the invitations to connect were not enough to induce Bankers Life employees to leave their jobs to come work for American Senior Benefits.

"The generic e-mails did not contain any discussion of Bankers Life, no mention of ASB, no suggestion that the recipient view a job description on Gelineau's profile page and no solicitation to leave their place of employment and join ASB," Justice John B. Simon wrote in the 12-page opinion.

The 1st District panel relied on employment law decisions from other states involving a former employee's use of social media.

For instance, a Connecticut court in 2014 rejected a lawsuit brought by a company against a former employee who updated his LinkedIn profile telling people to "check out" a website he made for a competitor.

**John B. Simon**

Meanwhile, a Michigan court in 2010 ruled that an employee's blog posts urging former colleagues to quit the company violated his nonsolicitation agreement.

"The different results ... can be reconciled when looking at the content and the substance of the communications," Simon wrote.

The 1st District panel found that the Connecticut case and Gelineau's case were very similar: The communications in question were generic invites to form a professional connection.

What the Bankers Life employees did from there after connecting with Gelineau is out of his hands, the 1st District panel continued.

"To violate his contract, Gelineau would have to actually, directly recruit individuals working in the Warwick, R.I., area," Simon wrote.

Weiler wrote that the 1st District panel's decision would clarify that, in Illinois, "attempting to connect via LinkedIn and posting information about a job on one's LinkedIn profile is not an improper solicitation."

The 1st District panel also threw out Bankers Life's claim that Gelineau worked with another American Senior Benefits employee, Mark Medeiros, to recruit its employees. Gelineau and Medeiros countered that claim in affidavit.

The 1st District panel noted that Medeiros was never bound by an agreement with Bankers Life, so his recruitment of an employee from there does not mean that Gelineau violated his covenant.

Former Cook County circuit judge Kathleen G. Kennedy granted summary judgment for Gelineau in February 2016.

Bankers Life was represented by David K. Haase and Todd M. Church of Littler Mendelson P.C. They declined to comment.

In addition to Weiler, Gelineau was also represented by Joseph P. Kincaid, Ronald L. Wisniewski and Troy M. Sphar of Swanson, Martin & Bell.

Weiler expressed satisfaction with the panel's ruling in a written statement, calling it well-reasoned and consistent with state policy "against unnecessary or overbroad restraints of trade."

"It is particularly important to have a clear expression of that policy at a time when so much networking is done via social media," Weiler said.

"The straightforward act of building a professional network does not run afoul of a non-competition agreement."

"We hope that the [1]st District's precedent will, going forward, dissuade corporations from aggressively and unreasonably seeking to prevent former employees from availing themselves of opportunities for professional development, both traditional and modern," he added.

Justices Maureen E. Connors and Mary Lane Mikva concurred with the opinion.

The case is *Bankers Life and Casualty Co. v. Gregory P. Gelineau, et al.,* 2017 IL App (1st) 160687.