

# Good Faith and Loyalty

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By: **Chaim J. Jaffe**

The issue of whether a former employee may solicit a previous employer's clients and customers is one that is continuously addressed by the courts. For purposes of this article, we will assume that a) the former employee is not subject to any written agreements that would contain a non-competition and/or a non-solicitation clause; and b) the former employee has not or will not disclose any proprietary information or trade secrets.

The law in New York is very clear that an employee owes certain fiduciary duties to his employer, including the duties of good faith and loyalty. *Island Sports Physical Therapy v. William Burns et al.*, 84 A.D.3d 878 (2d Dept. 2011). That being said, an employee may not solicit his employer's customers or otherwise compete during the course of his employment by the use of the employer's time, facilities and proprietary information. *First Mfg. Co., Inc. v. Young*, 45 Misc.3d 1214(A). Conversely, "an employee may solicit an employer's customers only when the employment relationship has been terminated." *Island Sports Physical Therapy v. William Burns et al.*, 84 A.D.3d 878 (2d Dept. 2011) (emphasis added). The theory behind the post-termination solicitation is that the courts frown on preventing individuals from earning a living.

Future articles will address the situation where an employee's employment has been terminated, either voluntarily or involuntarily, and the individual has physically or electronically misappropriated the employer's property.

If you have any questions, please do not hesitate to contact me or the attorney in our firm with whom you typically work.