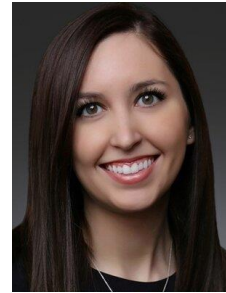


If Elphaba Had Signed A Restrictive Covenant In 'Wicked'

By **Emily Wajert** (March 5, 2025)

Like millions of other fans, I had the pleasure of seeing one of my all-time favorite musicals — "Wicked" — transformed onto the big screen this past holiday season. However, being the employment lawyer that I am, while watching the film, I couldn't help but think of the impact that a well-drafted restrictive covenant agreement could have had on the story.

For those unfamiliar with the tale, "Wicked" was originally a hit Broadway musical based on Gregory Maguire's 1995 novel, "Wicked: the Life and Times of the Wicked Witch of the West," and is a prequel to the beloved classic, "The Wizard of Oz."



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The musical tells the story of Elphaba Thropp — a young woman with green skin who ultimately becomes the Wicked Witch of the West — and her unlikely friendship with Galinda, who later becomes known as Glinda the Good Witch.

In Part 1 of the film, released this past fall,[1] Elphaba, an outcast due to her verdigris complexion, sets a goal to work with the all-powerful Wizard of Oz, musing that she'll finally be accepted by her peers if she works for him.

Elphaba spends time in school honing her magical abilities and sets off to meet the Wizard in the Emerald City. Unfortunately, the meeting does not go as planned. Although she initially agrees to work with the Wizard, the meeting takes a turn, and she not only refuses "employment," but also leaves determined to reveal the Wizard's secrets, including his true identity as a fraud.

In the story, the Wizard wields significant influence over the citizens of Oz, but his control over Elphaba ultimately slips through his fingers. But what if the Wizard had asked Elphaba to sign a restrictive covenant as part of her "onboarding process" when she started to work for him?

A strategically drafted restrictive covenant agreement could have been used to limit Elphaba's actions. It could have prevented her from undermining his authority by creating clear limitations on her ability to challenge the Wizard's regime.

Noncompete With the Wizard

For example, if the Wizard had asked Elphaba to sign a restrictive covenant agreement, he could have included a noncompete clause, which prevents an employee from working for a competitor or starting a new business after their employment ends.

After the end of Elphaba's short-lived "employment" with the Wizard, she embarks on her own journey in direct opposition to the Wizard's agenda. One could say that Elphaba becomes the Wizard's No. 1 business competitor. However, having a noncompete clause may have restricted Elphaba's ability to use her powers to disrupt his plan.

Of course, the enforceability of a noncompete would depend on Oz's local rules.

If Oz were a jurisdiction like California,[2] Minnesota,[3] North Dakota[4] or Oklahoma[5] — the noncompete likely would not be permitted.

If Oz had similar rules to those in states like Colorado,[6] Maine,[7] Maryland,[8] New Hampshire,[9] Oregon,[10] Rhode Island,[11] Virginia[12] or Washington,[13] the enforceability of the noncompete might depend on the salary amount the Wizard intended to pay Elphaba.

Moreover, Elphaba began work on the same day she met the Wizard. Because of this, if Oz followed the rules of jurisdictions like Washington, D.C.,[14] or Illinois,[15] certain procedural requirements would not have been met even if he had presented her with a noncompete, such as a 14-day consideration period or instructions about the opportunity to consult with counsel. And thus, the noncompete would be invalid.

Nonsolicit of the Wizard's Employees

Even if noncompetes were not permitted in Oz, the Wizard would have benefited from an employee nonsolicit, which are generally more widely enforced and accepted. This type of provision prohibits an individual, typically a former employee, from soliciting current employees to leave the company.

Fans of the "Wicked" musical may recall that the flying monkeys — who work for the Wizard, at first — leave the Wizard's employ and join Elphaba's workforce instead. "Wicked" movie fans will likely see this play out in more detail in Part 2 of the film.

If the Wizard had asked Elphaba to sign a restrictive covenant agreement, he could have included an employee nonsolicit clause to make clear that for a period of time after Elphaba's "employment" ended, she could not solicit any of the Wizard's workers to either leave their employ with him or join her workforce.

If Oz mirrored California law, the Wizard would want to steer clear of including any language that states or implies that Elphaba could not hire the flying monkeys, as that would likely be viewed as an impermissible no-hire clause. The Wizard would be better off sticking with a provision that strictly prohibits Elphaba from telling the flying monkeys to leave the Wizard, which still would have been helpful in this scenario!

Nondisparagement of the Wizard

The Wizard also could have included a nondisparagement clause in Elphaba's restrictive covenant agreement. This type of clause prevents a party from making negative or disparaging statements about the other party.

After defying the Wizard — and gravity — Elphaba begins her quest to expose the Wizard for the fraud he is, which will likely be explored more deeply in Part 2 of the film. He is not the "great and powerful" wizard he claims to be — but rather, is responsible for the problems of Oz, including the mistreatment of animal citizens.

Those who are familiar with "Wicked" know that the Wizard goes to great lengths to keep his identity a secret. And after one quick musical number, the identity he worked so hard to protect is in serious jeopardy of being exposed by Elphaba.

If the Wizard had better counsel, he would have had Elphaba sign a restrictive covenant agreement prohibiting her from publicly criticizing him or exposing the truth about his

behavior.

Depending on Oz's laws, the Wizard would need to carefully draft such a provision to ensure enforceability. If Oz's laws were similar to those in the United States, the Wizard would need to draft a provision that does not violate public policy.

Nondisparagement provisions that restrict an individual's right to speak out about matters of public concern — such as illegal activities, workplace discrimination, harassment or safety violations — are often deemed unenforceable.

In the U.S., laws like the National Labor Relations Act protect employees' rights to discuss working conditions. Moreover, there are many federal and state laws in the U.S. that protect whistleblowers from reporting misconduct — even if a nondisparagement clause exists.[16]

Here, Elphaba could try to argue that any sort of nondisparagement clause would not be enforceable because she is speaking out about matters of public concern, illegal activity and discriminatory conduct. However, the Wizard would have benefited from even a narrowly drafted provision!

Confidentiality and Return of Property of Wizard Documents and Secrets

Arguably, one of the Wizard's biggest mistakes in his "hiring" process with Elphaba was being too open and honest with her — like trusting her with company secrets too quickly. As such, the Wizard would have benefited from both a strong confidentiality clause and a return of property clause.

A confidentiality clause requires employees to keep the company's proprietary information and trade secrets confidential. A return of property clause requires employees to return company property upon termination, or often earlier at the company's request.

In their short meeting together, the Wizard shared several "trade secrets" with Elphaba that he would have been prudent to protect. He also showed her the Grimmerie — a powerful book of spells — which she then absconds with during her dramatic exit from the Emerald City.

The Wizard would have been in a much better position if he had required Elphaba to sign a confidentiality clause prior to sharing his trade secrets with her. Moreover, he could have had Elphaba expressly acknowledge and agree that she would not take company property — specifically, the most important book of spells in the entire land of Oz!

Although the enforceability of these provisions would, of course, depend on Oz's laws, confidentiality provisions are frequently enforced — especially when they are narrowly drafted and tied to the protection of company trade secrets. Similarly, it is difficult to imagine how Elphaba could argue that she does not legally need to return the Grimmerie — company property.

Finale

So, what might have happened if the Wizard had successfully obtained a signed restrictive covenant agreement from Elphaba?

I imagine the script may have read something like this:

(Elphaba realizes the Wizard has no powers and turns, ready to exit. She is furious.)

Wizard: Elphaba, just to remind you before you go. As my employee, you signed this restrictive covenant agreement. It prohibits you from engaging in any competing behavior against me for the next 12 months, soliciting any of my employees — so please do not talk to my flying monkeys on your way out the door, making disparaging comments about me — which includes revealing that I am not "a wonderful wizard," and revealing any of my trade secrets or confidential information — including that I am a mere "sentimental man." Oh, and please also hand over the Grimmerie, per the return of company property clause!

Elphaba: Oh no — I can't possibly defy gravity — I mean, defy this restrictive covenant agreement! I guess I'll go back to school with Glinda now...

(End scene.)

Elphaba's efforts to overturn the Wizard likely would have been quashed before she even had the opportunity to hit her famous battle cry riff.

So while I recommend "Wicked" Part 1 to all my friends and family for the fantastic acting and spell-binding musical numbers, the movie also serves as a reminder to employers and employment lawyers about the importance of restrictive covenants — and how they can change employers' lives "for good." [17]

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[1] Wicked: Part II is set to be released Fall 2025.

[2] Cal. Bus. and Prof. Code §§ 16600-16607.

[3] Minn. Stat. Ann. § 181.988.

[4] N.D. Century Code Sec. 9-08-06.

[5] Okla. Stat. tit. 15, §217 to 219B.

[6] Colo. Rev. Stat. §8-2-113.

[7] 26 MRSA §§599-A.

[8] MD Code Ann., Lab. & Empl. § 3-716.

[9] NH RSA 275:70(a).

[10] Or. Rev. Stat. §653.295.

[11] R.I. Gen. Laws § 28-59-3.

[12] Code of Virginia, 40.1-28.7:8.

[13] RCW 49.62.005 to 49.62.900.

[14] D.C. Code § 32-581.01 et seq.

[15] Illinois Freedom to Work Act, 820 ILCS 90 et. seq.

[16] For example, in California it is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to restrict an employee's ability to disclose information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that the employee has reason to believe is unlawful. (California Government Code section 12964.5). In Washington, the state's Silenced No More Act prohibits employers from requiring or requesting that workers sign nondisclosure or nondisparagement agreements that restrict workers' right to discuss illegal discrimination, harassment, sexual assault, retaliation, wage and hour violations, or any other violations of public policy. (RCW 49.44.211).

[17] Although to be clear, this author is team Elphaba!