

## AllianceBernstein Sues More Departed Advisors

By Mariah Summers September 13, 2011

**AllianceBernstein** is continuing its legal crusade against financial advisors who depart the firm for rival brokerages and take their books of business with them. The firm has filed lawsuits against eight former advisors in recent months, charging them with violating their non-solicitation agreements by leaving for a competitor without sufficient notice and taking client lists and other confidential information with them.

In the most recent suit, which was filed in mid-August, AllianceBernstein is going after **Christopher MacFarlane**, an advisor with \$165 million under management who announced he was leaving the firm on August 12 to join a competitor, **Baird**. Upon submitting his resignation, MacFarlane allegedly called and emailed clients, asking them to join him at Baird, according to the lawsuit.

In addition to attempting to solicit AllianceBernstein clients and taking trade secrets with him, MacFarlane is accused of violating the garden leave provision in his Incentive Compensation Award Program (ICAP) agreement, which states that he must give 60 days notice of his resignation.

MacFarlane is the eighth advisor that AllianceBernstein has sued since April for similar reasons. In June, the firm brought a case against **David Moran**, an Atlanta-based advisor who left for **UBS Wealth Management** and who had managed \$195 million in assets. And two weeks before that, AllianceBernstein went after a \$1.5 billion duo, **Peter Gelwarg** and **Kenneth Mayer**, who left for **Morgan Stanley Smith Barney**, as [reported](#). Both cases are still pending.

MacFarlane couldn't be reached for comment, while an AllianceBernstein spokesman has little to say about the case.

"We feel it is important that we uphold agreements with our employees and protect the interests of the firm and our clients," he says.

Part of the reason that AllianceBernstein sues its departing financial advisors so often is because the firm is not a signatory to the Protocol for Broker Recruiting. That compact, which was established to limit litigation between brokerages when an advisor moves from one firm to another, usually a rival, has been signed by hundreds of brokerages of all sizes, though it's not universally accepted. UBS and Morgan Stanley Smith Barney belong to the protocol, for instance, while Baird does not.

One attorney who has litigated similar non-solicit agreement violation cases against AllianceBernstein believes that the firm hasn't signed on to the protocol because it thinks doing so would make it easier for advisors to leave.

"The reason they have not joined is because they are concerned that it will make it easier for people to leave AllianceBernstein," says **Thomas Lewis**, partner in charge of the employment litigation group at **Stark & Stark**. "They don't want to join the protocol right now because there's a great concern that there might more people who would want to leave than join, and in that situation, the protocol would not be a good mechanism for them to use." AllianceBernstein would not comment on its reasons for not joining the protocol.

Lewis, who has litigated over 1,500 similar cases involving brokerage firms, says that such cases are typically settled either through **Financial Industry Regulatory Authority** arbitration or by a judge, who usually rules in favor of non-protocol firms with valid non-compete agreements that have been violated.

He adds that such judgments run counter to the conventional wisdom about non-competes. "There's an overwhelming thought in the industry that these agreements aren't enforceable for a number of reasons," Lewis says. "Typically, if it's a valid non-solicit, most courts will look to enforce the agreement. [But] if you had a book of business and brought that into the firm, you're generally allowed to leave with that book of business."

AllianceBernstein has approximately 300 advisors, who oversee a collective \$77.1 billion in client assets.

*FundFire is a copyrighted publication. FundFire has agreed to make available its content for the sole use of the employees of the subscriber company. Accordingly, it is a violation of the copyright law for anyone to duplicate the content of FundFire for the use of any person, other than the employees of the subscriber company.*

An Information Service of Money-Media, a Financial Times Company

.....