

Principals in Transition: Protect, Prevent, Preserve

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Transitions matter.

Done well, they are the first step in a new and exciting chapter for senior investment management professionals. Gone wrong, they can lead to years of acrimonious litigation and missed professional opportunities. When senior investment management employees or partners leave their current firms to join another or start their own, navigating this critical moment requires a deep understanding of the legal and contractual basis of their current arrangements, an honest understanding of the relationship between the principal and their current firm, and a clear set of objectives.

At Cole-Frieman & Mallon ("CFM"), our Principals in Transition practice focuses on the **Three Ps** - **Protecting** the departing principal's economics, **Preventing** limitations on future professional endeavors, and **Preserving** the relationship with the principal's current firm. **Protect, Prevent, Preserve.** We are industry experts, not employment law litigators, and our ecosystem expertise is both our strategic advantage in these negotiations and an important message to the principal's current organization that preservation of the relationship is important. We come to facilitate a smooth and fair transition, not to write demand letters or instigate litigation. We achieve this by: 1) bringing our fund expertise when analyzing current partnership agreements, 2) our knowledge of California's and

other jurisdictions' public policy against non-competition including overreaching non-solicit clauses and overly broad confidentiality restrictions that courts have ruled operate as non-competes, and 3) an understanding that while the investment management ecosystem is global in nature, it is a small community and relationships (among managers, allocators, and LPs) matter.

All of this is done without limiting the principal's ability to escalate if necessary. There is a time and place for litigation, and when it becomes clear that the best route for our client is litigation, transitioning from the **Three Ps** approach to another tactic with litigation counsel is seamless.

Protect your economics. Partnership agreements and carried interest grant agreements are complex documents with many hidden (and not so hidden) powers vested in the controlling parties. Understanding how investment funds and the economics of investment funds work is our specialty.

Prevent limitations on future professional endeavors. Few people leave investment managers intending to leave the industry. Most, in fact, are leaving to start their own venture or join another investment manager doing substantially similar work. The key to these negotiations is to ensure that whatever limitations are connected to future economic benefits from the principal's previous organization are narrowly tailored. Central to this is understanding the principal's statutory and common law rights in California and other jurisdictions that have a public policy against non-competition agreements. In furtherance of this public policy, California and other state courts have become increasingly hostile to non-solicit and overly broad confidentiality agreements that operate to restrain a person's ability to work.

Preserve your relationship. CFM's approach is designed to preserve the relationship with the principal's current investment manager. The elements necessary to achieve this are: 1) being reasonable in the principal's requests on economics and limitations, 2) approaching the negotiations collaboratively, 3) having a clear understanding of the other side's objectives and finding ways to get them what they need from the transition, and 4) being thoughtful in whom you hire to handle this transition. Because CFM is embedded in the investment management ecosystem, hiring our firm in these matters signals the principal's desire to "get the numbers right," to ensure that the principal has the freedom they need to start their next endeavor, and perhaps most importantly that this will all be achieved in a collaborative way.

About Cole-Frieman & Mallon LLP:

Cole-Frieman & Mallon LLP is a leading investment management law firm known for providing top-tier, innovative, and collaborative legal solutions for complex financial services matters. Headquartered in San Francisco, Cole-Frieman & Mallon LLP services both start-up investment managers and multi-billion-dollar firms. The firm provides a full suite of legal services to the investment management community, including fund formation (hedge, VC, PE, real estate), adviser registration, counterparty documentation, SEC, CFTC, NFA and FINRA matters, seed deals, cybersecurity regulatory matters, manager due diligence, employment and compensation matters, and routine business matters. The firm also publishes the prominent [Hedge Fund Law Blog](#).