

# **ATTACHMENT A**

## ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

### **Talking Points for Discussion with Hire Candidate** **Who Has Worked for a Competitor** **(To Ensure Compliance With Legal Obligations to Competitor)**

#### INTRODUCTION

- We need to explore what would be necessary to protect current employer's trade secrets and confidential information ("proprietary information").
- Our goal: to make sure that we take necessary steps to make sure that you will not use or disclose your current or past employers' proprietary information if you come to work for us (note: as used herein, "prior employers" means the employee's current and past employers).
  - Note: if you use proprietary information of your prior employer in your work for us, your prior employer could sue you, us, or both
  - You would be required not to use or disclose proprietary information of your prior employers in the course of your work with our company.
- DO NOT REVEAL ANY PROPRIETARY INFORMATION AS WE DISCUSS!!!
- Rather, let's talk generally about the types of limitations we would need to have in place if you came to work here.

#### AGREEMENTS

- Do you have any agreements that relate to your prior employers' proprietary information, or any agreements that would affect your coming to work for a competitor?
  - Confidentiality/Invention Assignment Agreement?
  - Non-Compete Clause?
  - Customer Non-Solicitation Clause?
  - Vendor/Supplier Non-Solicitation Clause?
  - Employee Non-Solicitation Clause?
- In your opinion, would any of these agreements restrict your ability to work here?
  - If so, how?
  - If not, why not?

- Ask for copies of any relevant agreements.

## **USE OR DISCLOSURE OF PROPRIETARY INFORMATION**

- Explain what “proprietary information” means
  - Likely defined in confidentiality agreement
  - Generally
    - Kept confidential
      - Not generally known
      - Not disclosed to outsiders (without an NDA)
    - Has value from not being known
    - Can be information just kept “in your head”
      - Not limited to documents, e-mails or computer files
        - **BE CAREFUL NOT TO TAKE ANY DOCUMENTS OR COMPUTER FILES, OR TO SEND ANY E-MAILS TO AN EXTERNAL ACCOUNT WITH PROPRIETARY INFORMATION!**
- Without revealing any proprietary information, what kinds of proprietary information do you think you would need to avoid using or disclosing (e.g., customer names, information about new products, pricing, new technologies, vendors, etc.)?
  - As to each:
    - How do you think this would restrict your work for us?
    - How long do you think any restriction(s) would need to be in place (normally depends on how long the information would be viewed as sensitive)?
- Without revealing any proprietary information, generally what kinds of situations or work activities could create a risk that you would need to use or disclose proprietary information (e.g., selling certain products, selling to certain customers, work related to certain projects/technologies)
  - As to each:

- How would the situation/activity create a risk?
- Could your work be restricted in any way to avoid this risk?
  - If so:
    - How?
    - Would this be effective to avoid the risk?
    - How long do you think any restriction(s) would need to be in place (normally depends on how long the information would be viewed as sensitive)?
- How comfortable are you that we could find a way to structure your work activities to avoid any risk that you would use or disclose proprietary information of your prior employers? Explore.

**EVIDENCE THAT COULD BE USED AGAINST THE EMPLOYEE**

- Have you ever communicated with anyone about why you might come to work for us?
  - Have you ever said anything (verbally, by e-mail, or otherwise) that could be construed to mean that you planned to use or disclose proprietary information of your prior employer if you came to work here?
- Have you done anything that a prior employer might claim is suspicious?
  - Taken documents?
  - Erased files?
  - E-mailed confidential files to personal e-mail account?
  - What about things at home, in your car, etc?
  - Anything else?
- Have you solicited any employee or customer of a prior employer?
- Is there anything else you think I need to know?

# **ATTACHMENT B**

[SAMPLE MEMO TO AFFECTED EMPLOYEE]

MEMORANDUM

TO: [EMPLOYEE NAME]  
FROM: [HUMAN RESOURCES REPRESENTATIVE]  
DATE: \_\_\_\_\_  
RE: YOUR CONCERNS

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[NAME], as we have discussed, I appreciate your sharing your concerns with me regarding [DESCRIBE, e.g., "remarks that you told me that John Smith made to you"]. As I conveyed during our meeting, the Company is taking your concerns very seriously. The conduct you told me that you were subjected to would amount to a [serious] violation of company policy.

The Company promptly will commence an investigation to determine what occurred, and will promptly take any and all corrective action that is necessary and appropriate. INVESTIGATOR] will be conducting the investigation, and a meeting will be scheduled with you promptly so that [INVESTIGATOR] may interview you in detail regarding your concerns. As other witnesses to the investigation have been and/or will be informed, you must not speak with any other actual or potential witnesses about the investigation, as doing so could interfere with the investigation. The Company will provide you with a written summary of the investigations findings, including a description of any and all corrective action that will be taken.

[[ACCUSED EMPLOYEE] has been instructed that [HE/SHE] must exhibit a high level of professionalism in all interactions with you, and that there is to be no retaliation against you for expressing your concerns.] [During the investigation, [NAME OF ACCUSED EMPLOYEE] will be [PLACED ON PAID ADMINISTRATIVE LEAVE, OR ANY OTHER TEMPORARY CORRECTIVE ACTION THAT MAY BE APPROPRIATE]. If you ever believe that you are being retaliated against or mistreated, please let me [OR OTHER MEMBER OF MANAGEMENT] know immediately. The Company will not tolerate any form of retaliation or mistreatment against you.

If you have any questions, please let me know.

# **ATTACHMENT C**

[SAMPLE MEMO TO ACCUSED EMPLOYEE]

MEMORANDUM

TO: [ACCUSED EMPLOYEE NAME]  
FROM: [HUMAN RESOURCES REPRESENTATIVE]  
DATE: \_\_\_\_\_  
RE: INVESTIGATION

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As we have discussed, the Company is commencing an investigation into [e.g., "reports of several inappropriate comments made by you to other employees"]. As I conveyed during our meeting, the Company is taking these concerns very seriously. The conduct described could amount to a [serious] violation of company policy, if substantiated.

[INVESTIGATOR] will be conducting the investigation, and a meeting will be scheduled with you soon so that [INVESTIGATOR] may interview you in detail regarding this matter. As other witnesses to the investigation have been and/or will be informed, you must not speak with any other actual or potential witnesses about the investigation, as doing so could interfere with the investigation.

Per our discussion, and as a matter of Company policy, there is to be no retaliation against any person who has raised concerns or participated in this investigation as a witness or otherwise. You must consistently display only the highest level of professionalism to [NAME(S)], and must strictly refrain from [e.g., "making any comments of a sexual or unprofessional nature to any of your colleagues"]. [As a precaution and reminder, I am providing you with a copy of the Company's [Sexual Harassment Prevention Policy], the provisions of which we reviewed in our meeting today.] The company would consider any [communications of a sexual nature], retaliation or interference with the investigation to be a very serious violation of its standards of conduct.

[ADMINISTRATIVE LEAVE OPTION] [You are being placed on paid administrative leave effective immediately. You will remain on leave until further notice, while the Company completes its During this leave, you must refrain from coming to the Company's premises or performing any work on behalf of the Company. Your building access has been disabled.]

[INVESTIGATOR] intends to complete the investigation as soon as possible, and we hope to communicate the outcome of the investigation to you this week.



[You are instructed to direct only to me [or [INVESTIGATOR]] any information, questions, or other communications regarding your paid leave, the investigation, or your employment with [COMPANY].]

# **ATTACHMENT D**

**INVESTIGATION REPORT**

**TO: CONFIDENTIAL HUMAN RESOURCES FILE**

**FROM: [NAME, TITLE]**

**DATE:**

**RE: COMPLAINT(S) MADE BY [NAME]**

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**I. INTRODUCTION**

**II. [NAME]'S ALLEGATIONS**

[BRIEF SUMMARY OF COMPLAINTS]

**III. INVESTIGATION PROCESS**

[SUMMARIZE INVESTIGATION PROCESS]

I interviewed the following witnesses during the investigation:

<b>Witness Name</b>	<b>Interview Date(s)</b>

I informed all witnesses that I was acting as a neutral, independent investigator, and admonished them to answer my questions truthfully. I also admonished all witnesses not to discuss the investigation with any other actual or potential witness (and that if they did so, it could be considered interference with the investigation).

I considered the following documents as part of my investigation:

**IV. SUMMARY OF EVIDENCE AND FINDINGS AS TO COMPLAINTS**

**A. INCIDENT #1: \_\_\_\_\_**

**1. WITNESS ACCOUNTS**

**a. [WITNESS #1]**

**b. [WITNESS #2]**

**c. [WITNESS #3]**

**2. EVALUATION OF EVIDENCE & FINDING**

**B. INCIDENT #2: \_\_\_\_\_**

**1. WITNESS ACCOUNTS**

**a. [WITNESS #1]**

**b. [WITNESS #2]**

**c. [WITNESS #3]**

**2. EVALUATION OF EVIDENCE & FINDING**

**III. CONCLUSION**

[SUMMARY OF FINDINGS; RECOMMENDATIONS]

# **ATTACHMENT E**

## MEMORANDUM

TO: John Smith

DATE: January 5, 2001

FROM: Patrick Bright  
Senior Vice President, Human Resources & Administration

RE: Your Concerns

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### **I. INTRODUCTION**

John, the purpose of this memorandum is to respond to the concerns that you expressed regarding certain employees of the Company. As George Jones and I have told you before, we appreciate you bringing these matters to our attention and you will not be retaliated against for raising these concerns.

### **II. THE CONCERNS YOU EXPRESSED**

You indicated that you felt that you were working in a hostile work environment as a result of derogatory, demeaning and offensive comments made to you by James Doe and Jane Mansfield, and that as a result of you voicing your concerns to Ms. Mansfield that you have been retaliated against.

### **III. OUR RESPONSE AND INVESTIGATION**

We have taken the concerns you raised very seriously. We have investigated your concerns thoroughly by interviewing the employees that you named in my conversation with you. In addition, we questioned James Doe and Jane Mansfield about your concerns.

### **IV. RESULTS OF THE INVESTIGATION**

Our investigation could not corroborate some of your allegations, and we believe that you exaggerated the nature of the comments that were made to you to some extent. Nevertheless, we did find that James Doe and Jane Mansfield made some comments to you that we consider unprofessional. To prevent any similar occurrences in the future, we have counseled James Doe and Jane Mansfield to avoid making any comments to you regarding the subjects of sexual orientation, dating, or other similar non-work related personal subjects. They have both committed to refrain from making similar comments in the future.

Although we also investigated your concern that you were retaliated against for raising concerns, we found no basis to conclude that you were retaliated against. As a precaution, however, we have counseled [INSERT NAMES] that you are not to be retaliated against in any way for raising your concerns.

### **V. HOW WE HOPE TO RESOLVE YOUR CONCERNS**

In addition to taking the steps above, we want to take the following steps to help you be a happy and productive employee:

**A. Our Assurances to You**

We wish to make very clear the company’s assurances to you that:

- (1) you will not be retaliated against for raising concerns in good faith about the legality of any company activities;
- (2) Neither James Doe nor Jane Mansfield will discuss issues related to sexual orientation, dating, or other similar non-work related personal issues; and,
- (3) James Doe will participate in training to improve his employee communication skills.

If you ever have concerns about the legality of any company activity, please bring those concerns to me or to any other member of management with whom you are comfortable.

**B. Meetings to “Clear the Air”**

With the hope that it will make you more comfortable working with James and Jane in the future, we would like to hold two separate meetings. One will be with you, James, and George Jones and the other will be with you, Jane, and George Jones. These meetings will give James and Jane the opportunity to reaffirm that they will treat you professionally and that you will not be retaliated against for raising good faith concerns about whether you have experienced some form of unlawful harassment. Also, this would be a good opportunity for you to discuss with James and Jane the comments that each made which caused you concern.

**VI. YOUR COMMENTS**

Please provide below any comments you have regarding our handling of your concerns and our proposed resolution (attach additional sheets as necessary):

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By signing below, I acknowledge that I have read this memorandum and I understand it.

\_\_\_\_\_  
John Smith

\_\_\_\_\_  
Date

# **ATTACHMENT F**



## MEMORANDUM

**TO:** John Smith  
**FROM:** Jane Doe  
**DATE:** \_\_\_\_\_, 20\_\_\_\_  
**RE:** Counseling Regarding Inappropriate Behavior

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The purpose of this memorandum is to summarize, and to record in writing, counseling you have received regarding your behavior towards Hillary Bush and Laura Clinton. As we have previously discussed, Ms. Bush has claimed that you sexually harassed both her and Ms. Clinton. Although the Company's investigation determined that Ms. Bush exaggerated these claims (i.e., it could not be demonstrated that you engaged in conduct serious enough to meet the definition of harassment), the investigation did reveal that you engaged in conduct that our company considers inappropriate. More specifically, you engaged in flirtatious behavior with Ms. Bush and Ms. Clinton, and pursued a romantic/personal relationship with both of them, after you should have realized that they did not welcome such behavior and did not want such a relationship.

Although your conduct did not cross the line into "sexual harassment," we find that it was inappropriate and must not be repeated. This type of conduct can harm the Company in many ways, including damaging employee morale, causing distraction, and causing the Company to have to deal with legal claims (note that even unfounded legal claims are very time consuming and expensive to deal with).

For all of these reasons, we are instructing you that you must not pursue any romantic or personal relationship with any of your co-workers after you have received any indication that the co-worker is not interested in such a relationship, and likewise you should not engage in unwelcome flirtatious behavior with any co-worker. As an executive of the Company, we expect you to exercise a high level of judgment to resolve doubt in favor of not being flirtatious with or pursuing romantic/personal relationships with your co-workers, and to avoid even the appearance of impropriety.

Moreover, as you have previously been advised, you must not in any way retaliate against either Ms. Bush or Ms. Clinton for expressing concerns regarding your behavior. The Company must encourage employees to raise these kinds of concerns and any form of retaliation will not be tolerated.

Although the Company does not countenance your behavior, it seems appropriate to note that the investigation revealed you did not repeat this type of behavior after Charlie Coleman confronted you about it in September of 2001. Nevertheless, now that the Board of Directors has learned of this behavior, it is only appropriate that you hear from the Board as a whole on this matter.

Please sign this memorandum in the space provided below and return it to Charlie Coleman. Please contact me immediately if you have any questions.

READ AND UNDERSTOOD:

\_\_\_\_\_  
John Smith

\_\_\_\_\_  
Date

YOUR COMMENTS—PLEASE PROVIDE ANY COMMENTS YOU WOULD LIKE TO MAKE BELOW (ATTACH ADDITIONAL SHEETS IF NECESSARY):

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