

Mason and shepherd facing some delicate legal and ethical issues

[Law](#)



Mason and Shepherd Facing Some Delicate Legal and Ethical Issues

Mason and Shepherd are facing some delicate legal and ethical issues related to their intention of starting their own business and leaving their current employers. Both of them have signed agreements that somehow limited their possibilities of starting a new business in the future. The situation of each of them will be further analyzed:

a) Sheila Mason:

Sheila's leaving ATS raises both legal and ethical issues concerning her employment at ATS.

Mason was planning to start a business which involved the development and sale of a product that, at a first sight did not compete with ATS' products, but did facilitate the creation of products which would compete with those developed by ATS in the future. Although Sheila claims that while working for ATS, the company's policy regarded the products that furthered UNIX-based systems as a good thing for ATS no matter where it came from, this is not an official statement of ATS and it does not prevent ATS from taking legal action against such situations. Sheila's starting a business with this kind of products circumvents the Non-competition clause, and, inevitably, leads to the circumvention of the Non-solicitation of customers clause. This is normal, as such a product needs to be sold to the same range of customers with whom ATS works with. Moreover, a lot of the work that Sheila had done on developing the concept of Intelisoft was done by her using ATS's property: her working laptop was connected to her home computer and her Palm, which, additionally to the above-mentioned, violates the clause referring to

the company property usage. Another clause which is violated by Sheila is the Assignment of Developments clause, which stipulates that any development that “(i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise.” Her further actions may involuntarily lead to her violating the non-disclosure clause, too.

Sheila has signed with ATS an Employee Noncompetition, Nonsolicitation, Nondisclosure and Developments Agreement, by which she was bound to a Non-competition, Non-solicitation of Customers Clauses and some additional clauses related to usage of company property and assignment of developments. She should terminate her employment at ATS according to the law requirements and be prepared to face serious legal litigations.

Therefore, Mason should give an official notice to her employer and hire a good attorney in order to protect her in the future.

b) Craig Shepherd:

Craig finds himself in a legally awkward position, too. He has signed with Nova an Agreement Regarding Assignment of Inventions and Non-Disclosure, by which he is bound to “...communicate to an officer of the Company promptly and fully all inventions ...

made or conceived by me ... from the time of entering the Company's employ until I leave, ... which result from or are suggested by any work which I may do for or on behalf of the Company." The translator software was developed by Craig during his employment at Nova. However, Craig may use in his defense the fact that the idea of conceiving such a program came to him during his work at Riverhead, being inspired by the problems of Riverhead's software. This may be hard to prove, but it is not impossible. Craig should also terminate his employment at Nova in proper manner, through an official notice and be prepared to be sued by Nova for refusing to hand them his invention. As in Mason's case, a good attorney is needed here.

2. The non-disclosure agreement considerably limits the possibility of expansion of a venture capitalist. I believe it is reasonable for the companies to ask employees to sign non-disclosure agreements, in order to protect all the information concerning the company's activity. I also find it reasonable, considering the fact that companies are hiring people whose experience and knowledge is enriched due to working in that specific company, as in Mason's and Shepherd's case. The company is investing in its employees and is entrusting to them serious confidential information related to its activity, including know-how, techniques, systems, processes, engineering data, software programs, software code, works of authorship, customer lists, customer information, supplier lists, supplier information, marketing or sales information, financial information, financial projections, pricing information, business plans, projects, plans and proposals - all of this information being collected and accumulated by the company during years of activity and hard

work and at the same time, being vital information for a venture capitalist willing to invest. Under these circumstances, I believe that non-disclosure agreements are reasonable, but it is imperative to avoid them being applied excessively and abusively. A venture capitalist should comply with such kind of clauses, but this should not limit or prevent one from starting a new business.

3. It is certain that if Sheila and Craig are willing to pursue with their plans of starting their own business, a lawyer should be hired. I completely disagree with them hiring an attorney who has worked with ATS, as a conflict of interest may occur and it would not be in Mason's and Shepherd's favor. She should also avoid hiring an attorney who is working with the Venture capitalists, as his activity depends on the VC and another conflict of interests might occur in this case. The possibility of hiring the intellectual property boutique firm recommended by Shepherd's friend is the most reasonable of all, as it does avoid the situation of conflicts of interests. It is certain that an independent attorney or law firm, that does not depend in any way of the parties involved, should be hired. It is also preferable that the attorney is specialized in intellectual property issues and a good defense for Mason and Shepherd is proposed by him.