



Sullivan | Strickler



# FORENSIC SERVICES

TRADE SECRET & DEPARTED EMPLOYEE



## OVERVIEW

Every newly hired employee is both a potential asset and a potential liability to new employer.

In a scenario when an employee is in the process of moving between two companies, the employee is often focused on the assets being brought to the new company. There should be awareness of the liabilities as well.

The current employment contract, employee handbook and trade secret law are full of potential pitfalls that need to be addressed before the transition.

There are default obligations, generic obligations and contractual obligations related to the former employer's trade secrets. Failure to meet contractual obligations can bring a law suit or loss of employment. In addition to engineering and product design information the former employer might consider customer lists, customer contact information, marketing information, pricing schedules, proposals, all trade secrets or confidential materials. Business emails are another source of potential prior employer's property.

We recommend engagement with a labor and employment lawyer with litigation experience to review past employment and confidentiality agreements. Having a lawyer review and interpret prior employer's employee handbook is critical during this transition. Together, a well-documented defensible way of handling data that keeps any potential liability from attaching itself to you as you transition can be determined. The lawyer will advise if the previous employer's property, including electronic data, contractually must be returned to the former employer upon termination or separation.





## SCENARIO 1

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### PROBLEM FACED

An employee recently left, and the employer is suspicious that Intellectual Property (IP) was taken

### SOLUTION OFFERED

The employee's computer was imaged as well as a copy of the email account, and cellphones (if available).

Once the devices are imaged we provide a set of triage reports which provide: communications (such as text messages) from the cellphones, USB connectivity analysis, file explorer artifact analysis, and a list of office documents that were opened by the user. We also look for use of cloud services like Dropbox.

If the above finds indications of IP theft, it is typically sufficient to get a judge to order a further round of discovery focused on the personal devices and new employer devices. We can and do assist in those levels of discovery as well.

## SCENARIO 2

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### PROBLEM FACED

An employer has been contacted by a previous employer with allegations of IP theft.

### SOLUTION OFFERED

There is no typical response that Sullivan|Strickler can prescribe. We would work with the client to either formulate a response, or for Sullivan|Strickler to be named a neutral expert by the court and assigned specific duties. A list of recent cases can be provided for your reference with a CV's from our forensics examiners.





## SCENARIO 3

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### PROBLEM FACED

An employee has hired a new employee, but they have not yet started in the role.

### SOLUTION OFFERED

We offer pro-active "defensible deletion" services to work with the new employee to ensure that the former employees IP has been removed from the personal devices and cloud accounts. This is a pro-active service deployed with every newly hired employee in order to avoid a future lawsuit, and if there is a lawsuit it greatly increases the likelihood of a summary judgement on the part of the hiring firm with minimal litigation cost.

The outside counsel consults with the newly hired employee and reviews their past employment and confidentiality agreements still in affect. They determine if the previous employer's trade secrets contractually must be returned to the former employer upon termination, etc. They discuss the possibility that the employee might have confidential or trade secrets of his former employer in his possession.

Once the outside counsel understands the prior obligations of the newly hired employee they consult and advise that a "defensible deletion" protocol should be deployed. The "defensible deletion" protocol may include imaging the personal devices and cloud accounts, then exporting out copies of the former employers' materials for return, deleting the materials from the personal devices and cloud accounts, and finally reimaging.

In general, our clients prefer to have this process implemented and completed before the new hire's first day of working. This ensures there is no window of time window offending materials might get transferred into their enterprise.

