EXERCISE
PRIVILEGE IN LITIGATION

Background

You're a junior associate on a litigation team that's in the middle of document production. You represent a client, Company A, that's been accused of wrongfully terminating a number of employees on the basis of race and denying them severance owed by contract. You're conducting a search in the production and find the document below, which your client produced to the other side in its most recent production.

Legal Counsel <legal@companya.com>

From: Legal Counsel <legal@companya.com>   Thurs., Dec. 6, 2015 at 9:30 AM
To: ajennlyn@companya.com; btime@companya.com; apeters@companya.com

Re: Legal – Review of Contract

All,

At Alex's request, I reviewed the employment contract's provision regarding the process for terminating an employee and the severance provisions. In my opinion, these provisions will be upheld in court and can be used to terminate any employee who has signed the contract. I can provide you with cases where similar provisions have been upheld if needed. However, according to my reading of the contract and the case law, there are a number of steps that you must take before terminating the employee to ensure that the severance provision does not apply: (1) providing the employee with notice of the deficient performance, (2) placing the employee on a two-month probationary period, and (3) giving the employee two weeks' notice of the termination.

Can we set up a meeting for this Friday to discuss in more detail?

Best regards,
Dave
Legal Counsel

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You have a weekly meeting with the senior associate on the team scheduled for tomorrow to provide a status on the doc production.

Instructions

Come prepared to discuss your finding with the senior associate, including the following:
- Whether the attorney-client privilege or work product doctrine protects this document and why;
- What steps you'll take regarding this document, and when; and
- If a clawback is necessary, what information should be included in the clawback email or letter.

HOTSHOT