

STATE OF MINNESOTA  
COUNTY OF RAMSEY

EMPLOYMENT  
DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Clifford L. Whitaker, et al., on behalf of )  
themselves and all others similarly )  
situated, )

Plaintiffs, )

vs. )

3M Company, )  
Defendant. )

Court File No. 62-C4-04-012239

[G. Johnson]

**ORDER MODIFYING AMENDED  
ORDER REGARDING *EX PARTE*  
COMMUNICATIONS WITH PUTATIVE  
CLASS MEMBERS AND CURRENT  
AND FORMER EMPLOYEES**

[Class Action]

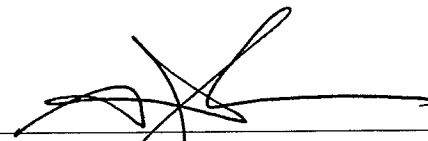
This matter came on for hearing before the undersigned, a Judge of District Court, on January 16, 2007, on Plaintiffs' Motion to Amend the Amended Order Regarding *Ex Parte* Communications with Putative Class Members and Current and Former Employees, signed October 19, 2005, to allow contact with certain former employees.

Based upon the arguments of counsel, and upon all of the files, records, and proceedings herein,

**IT IS HEREBY ORDERED** that plaintiffs' Motion is granted. The Court will sign and enter the attached Second Amended Order Regarding *Ex Parte* Communications with Putative Class Members and Current and Former Employees.

Dated: 2/21, 2007

By the Court:

  
\_\_\_\_\_  
Gregg E. Johnson  
District Court Chief Judge

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[G. Johnson]

**SECOND AMENDED ORDER  
REGARDING *EX PARTE*  
COMMUNICATIONS WITH PUTATIVE  
CLASS MEMBERS AND CURRENT  
AND FORMER EMPLOYEES**

[Class Action]

**PUTATIVE CLASS:**

1. For purposes of communications, until further order of this Court, the putative class is defined as follows:

**All persons who were 46 years of age or older when employed by 3M in Minnesota, in a salaried position below the level of director, or salary grade 18, at any time and who did not sign a document on or about their last day of employment purporting to release claims arising out of their employment with 3M.**

**PLAINTIFFS' COUNSEL:**

2. Plaintiffs' counsel may engage in communications with all former 3M employees subject to the following limitations:

a. If initiating the contact, prior to any discussion of facts, Plaintiffs' counsel shall fully disclose to former employees their identity and their representation of plaintiffs in this action; state that the interests of their clients are adverse to those of 3M; state that they seek to represent the interests of all members of the putative class, but that the Court will decide whether they may do so and whether the case will be certified as a class action; state that the reason they

are seeking the communication as it concerns 3M; and inform the individual of their right to refuse to communicate with them, as well as the right to have their own counsel.

b. In any communication, prior to any discussion, Plaintiffs' counsel shall inquire of the former employee, 1) whether they ever held a managerial or supervisory position when employed by 3M and, if so, the title and nature of the position; 2) whether they have ever engaged in communications with any attorney employed by 3M in its Office of General Counsel or Office of Intellectual Property Counsel, or any attorney retained by 3M to regularly provide legal advice to 3M employees, or to represent 3M as outside counsel (collectively referred to herein as a "3M attorney") relating to any 3M business matters; 3) whether they have ever held a position with responsibilities that included carrying out or acting upon the advice of a 3M attorney when employed by 3M; 4) whether they have ever taken any action or made any decision at the direction of any 3M attorney in connection with this litigation or any litigation against 3M alleging employment-related claims against 3M; 5) whether they are represented by counsel in prosecuting employment related claims against 3M.

c. Plaintiffs' counsel then shall instruct every individual who provides an affirmative answer to b. (1)(2) or (3) that under no circumstances should they discuss with, refer to, or otherwise disclose to anyone associated with Plaintiffs' counsel any communications subject to the attorney-client or work product privileges of which they were or may have been aware of at 3M, including any discussion with, advice from, or actions taken at the direction of any 3M attorney and any documents prepared by, from, or at the direction of any 3M attorney.

d. Plaintiffs' counsel shall instruct any former employee who provide an affirmative answer to the question in section 2(b)(4) that Plaintiffs' counsel are prohibited from further communications with that individual and if they wish to be represented in asserting an alleged

claim against 3M, Plaintiffs' counsel shall instruct them to seek counsel not associated with Plaintiffs' counsel. Plaintiffs' counsel shall instruct every individual who provides an affirmative answer to question 2(b)(5) that Plaintiffs' counsel are prohibited from further communications with that individual without the consent of their counsel and may inquire if they would identify their counsel.

3. Plaintiffs' counsel may not engage in any ex parte communications with any current 3M employee:

a. Who supervises, directs or regularly consults with any 3M attorney concerning this litigation;

b. Who has authority to obligate 3M with respect to this litigation; or

c. Whose act or omission in connection with this litigation may be imputed to 3M for the purpose of civil or criminal liability. This group of employees shall include all those who are responsible for the various human resources systems at issue in this litigation, human resources staff, as well as those employees who supervise/manage any member of the putative class. 3M shall provide a list of those employees to Plaintiffs' counsel within ten days of this order, and shall update that list monthly to reflect changes in employment.

4. If Plaintiffs' counsel engages in communications with a current 3M employee and subsequently discovers that they are included within the description in sections 3(a)(b)(c), Plaintiffs' counsel shall immediately cease those communications and immediately notify 3M of the facts surrounding the communication including the employee's name and the pertinent facts disclosed.

5. Plaintiffs' counsel may engage in communications with current 3M employees described in sections 3(a)(b)(c) if the current employee is a putative class member, subject to the following limitations:

a. The contact must be initiated by the employee; and

b. Plaintiffs' counsel must disclose to Defendant's counsel the identity of the employee in compliance with the Rules of Discovery and the Court's previous orders in this case.

6. Plaintiffs' counsel may engage in communications with current 3M employees, not described in sections 3(a)(b)(c), subject to the following limitations:

a. If initiated the contact, prior to any discussion, Plaintiffs' counsel shall fully disclose their identity and representation of plaintiffs in this action; explain that the interests of their clients are adverse to those of 3M; state that they seek to represent the interests of all members of the putative class, but that the Court will decide whether they may do so and whether the case will be certified as a class action; state the reason they are seeking the communication as it concerns 3M; inform the individual of their right to refuse to communicate with them, as well as the right to have their own counsel present.

b. In any communication, prior to discussion, Plaintiffs' counsel shall inquire 1) whether the individual ever held a supervisory or managerial position when employed by 3M, and if so, the title and nature of the position; 2) whether they have ever engaged in communications with any attorney employed by 3M in its Office of General Counsel or Office of Intellectual Property Counsel, or any attorney retained by 3M to regularly provide legal advice to 3M employees, or to represent 3M as outside counsel (collectively referred to herein as a "3M attorney") relating to any 3M business matters; 3) whether they have ever held a position with

responsibilities that included carrying out or acting upon the advice of a 3M attorney when employed by 3M; 4) whether they have ever taken any action or made any decision at the direction of any 3M attorney in connection with this litigation or any litigation against 3M alleging employment-related claims against 3M; 5) whether they are represented by counsel in prosecuting employment related claims against 3M.

c. Plaintiffs' counsel then shall instruct every individual who provides an affirmative answer to questions b. (1)(2) or (3) that under no circumstances should they discuss with, refer to, or otherwise disclose to anyone associated with Plaintiffs' counsel any communications subject to the attorney-client or work product privileges of which they were or may have been aware of at 3M, including any discussion with, advice from, or actions taken at the direction of any 3M attorney and any documents prepared by, from, or at the direction of any 3M attorney.

d. Plaintiffs' counsel shall instruct any current 3M employees who provide an affirmative answer to the question in section 6(b)(4) that Plaintiffs' counsel are prohibited from further communications with that individual and if they wish to be represented in asserting an alleged claim against 3M, Plaintiffs' counsel shall instruct them to seek counsel not associated with Plaintiffs' counsel. Plaintiffs' counsel shall instruct every individual who provides an affirmative answer to question 6(b)(5) that Plaintiffs' counsel are prohibited from further communications with that individual without the consent of their counsel and may inquire if they would identify their counsel.

e. Plaintiffs' counsel shall not contact current 3M employees during working hours.

#### **DEFENDANT AND ITS COUNSEL.**

7. Defendant and any 3M attorney may engage in ex parte communications with members of the putative class regarding any matters in the ordinary course of the employment relationship,

except that if the communication involves settlement, 3M must disclose the existence of this litigation, and allow the putative class member a reasonable time to decide if they want to engage in settlement discussions.

8. Defendant and any 3M attorney may engage in ex parte communications with members of the putative class to investigate the allegations made in this lawsuit and to gather factual information regarding that person's 3M employment for the defense of this lawsuit, subject to the Rules of Discovery and the following:

a. If initiating the contact, prior to any discussion, Defendant or the 3M attorney shall advise the putative class member of their identity; that the communication is not in the ordinary course of the employment relationship, but is related to the investigation of the allegations made in this litigation as they relate to that person's 3M employment, and/or to gather factual information regarding that person's 3M employment for the defense of this litigation; of their representation of Defendant or that they are acting in furtherance of 3M's representation in this action; that the interests of 3M may be adverse to those of the putative class members in this litigation; that putative class members are under no obligation to speak with them regarding 3M's investigation of the allegations made in this litigation as they relate to that person's 3M employment, and/or 3M's gathering of factual information regarding that person's 3M employment for the defense of this litigation; and that 3M is prohibited from engaging and will not engage in retaliatory conduct against employees, whether or not they choose not to speak with the Defendant or the 3M attorney.

b. Prior to any discussion, Defendant or the 3M attorney making the contact shall instruct the putative class member that if the putative class member is represented by counsel or has contacted counsel, is relying on the representation of counsel, or wishes to be represented by

Plaintiffs' counsel that Defendant or the 3M attorney making the contact is prohibited from further communications with the putative class member regarding 3M's investigation of the allegations made in this litigation as they relate to that person's 3M employment, and/or 3M's gathering of factual information regarding that person's 3M employment for the defense of this litigation and that the putative class member may simply state that they do not wish to communicate regarding 3M's investigation of the allegations made in this litigation as they relate to that person's 3M employment, and/or 3M's gathering of factual information regarding that person's 3M employment for the defense of this litigation.

9. Defendant and its counsel may communicate ex parte with any member of the putative class for the purpose of conveying any offer of settlement or agreements that would or purport to resolve, compromise or release claims of age discrimination under the Minnesota Human Rights Act and that have been asserted on behalf of the putative class in this litigation (collectively referred to herein as a "Release Agreement"), subject to the following limitations:

a. On a going-forward basis, any Release Agreement that is provided to or offered to a member of the putative class shall be made in writing and accompanied by a disclosure statement that: 1) advises the putative class member of the existence of this litigation, the definition of the putative class and that the claims asserted on behalf of the putative class include age discrimination in performance appraisals, training, promotions, compensation and terminations; 2) informs the putative class member that by signing the Release Agreement he/she may be prevented from asserting any claims, recovering any damages or obtaining any other relief in this litigation from 3M, any of its subsidiaries or affiliates, directors, officers or employees; 3) provides the putative class member not less than twenty-one (21) days to review the Release Agreement before signing, and not less than fifteen (15) days to rescind the Release

Agreement after it is signed; and 4) advises the putative class member to seek independent legal counsel prior to signing the Release Agreement.

b. Defendant and/or its counsel shall promptly provide to the Court and Plaintiffs' counsel a copy of the template communication(s) described in section 9(a) above.

10. This Order does not relieve either counsel in their communications with putative class members from any obligations not addressed herein arising under the Minnesota Rules of Professional Responsibility or imposed pursuant to Minnesota Rule of Civil Procedure 23.

11. This Order does not preclude either party or their counsel from seeking further guidance from the Court regarding communications with putative class members or former or current employees of 3M.

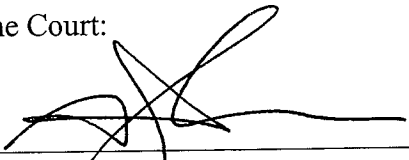
12. The parties and their counsel may seek to enforce this order or seek other relief regarding ex parte communications with putative class members or former or current 3M employees, provided that the parties have first consulted and made good-faith efforts to resolve any disputes.

13. The parties intend this Order to remain in effect until a determination has been made on class certification, at which time the parties will discuss the propriety of this Order, and make changes if needed.

Date: \_\_\_\_\_

2/21/07

By the Court:

  
\_\_\_\_\_  
Gregg E. Johnson  
Chief Judge of the District Court