

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 05 C 0208
v.)	
)	Judge James Zagel
SIDLEY AUSTIN LLP,)	
)	
Defendant.)	
_____)	

**PLAINTIFF EEOC’S CROSS-MOTION FOR ENTRY OF PROTECTIVE ORDER
GOVERNING SUBSEQUENT EMPLOYMENT INFORMATION AND DOCUMENTS**

Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) respectfully moves this Court for entry of the attached Protective Order Governing Subsequent Employment Information and Documents, attached as Exhibit A. In support of this motion the EEOC states as follows:

- 1) On October 6, 2006, the Court stated that it was willing to require production of subsequent employment documents of former partners of Defendant Sidley Austin LLP (“Sidley”) for whom the EEOC seeks relief, “but it will be under an extraordinarily stringent protective order.” See October 6, 2006 Transcript of Proceedings, pp. 4-5, attached as Exhibit B.
- 2) The Court stated that the terms of such a protective order must include:
 - (1) “One, the information will be produced only subject to a court order”;
 - (2) “The information can be given to only one designated damage expert who can be advised by one attorney”;
 - (3) “In the case of Sidley, it may not be a person employed by Sidley, it has to be outside counsel”; and

- (4) “The documents, the actual original documents, will be placed under seal and held by the Court after examination with something that will order the destruction [of the documents] after the litigation is over” or the return of the documents to their producers.

Id. at 5 (emphases supplied).

3) The EEOC and Defendant Sidley Austin LLP (“Sidley”) have conferred and attempted in good faith to agree upon the terms of an appropriate protective order. The parties reached agreement on most provisions of a proposed protective order. The parties’ proposed versions of the disputed provisions are highlighted in Exhibit C to Defendant’s Motion for Entry of Protective Order Governing Certain Subsequent Employment Information and Documents.

Scope of Protective Order

4) The EEOC’s proposed provision defining the “Confidential Subsequent Employment Information” includes within the scope of the proposed protective order all of the categories of subsequent employment information that Sidley requested in its subpoena document requests to former partners, including any equity or ownership interest a former partner has held in a law firm after leaving Sidley, the former partners hours and billings, the subsequent law firm’s revenues, and business generated by a former partner since leaving Sidley.

See Exhibit A, § I.A.

5) Sidley’s proposed alternative to this provision would appear to exclude from this protective order many of the subsequent employment documents that it seeks — documents which the Court stated could be produced only subject to a new, “extraordinarily stringent” protective order. For example, Sidley’s proposal fails to include such highly confidential information as hours, billings, revenues, and business generation at third party law firms.

6) Sidley's chief reasons for seeking to exempt certain subsequent employment information from this new protective order are to enable wider disclosure of that information to Sidley's counsel and to certain high-level Sidley partners. As noted in paragraph 2, supra, this is precisely that this new protective order is intended to prevent. Given the limited relevance, if any, that much of this information will likely have to this action, a team of one or two of Sidley's outside attorneys, one damages expert, and one legal assistant should be entirely capable of conducting any necessary analyses.

Need for Court Order

7) The EEOC's proposed protective order includes a provision, § II, that codifies the Court's requirement that subsequent employment documents "will be produced only subject to a court order." See Exhibit B, at 5.

8) The transcript of the October 6, 2006 hearing also makes it clear that there must be an individualized determination of what subsequent employment documents each former partner should be required to produce, based, in part, on Sidley's articulated need for such documents. See id., at 16-17, 20-23. The EEOC's proposed § II is consistent with that procedure.

Prohibition on Disclosure to Sidley Partners and Employees

9) The EEOC's proposed protective order includes a provision, § III.N, that makes clear that no confidential subsequent employment information may be disclosed to current or former partners of Sidley.

10) This provision is consistent with the Court's stated requirement that "[t]he information can be given to only one designated damage expert who can be advised by one

attorney. In the case of Sidley, it may not be a person employed by Sidley, it has to be outside counsel.”

11) The EEOC is aware of no reason to exclude this important protection from the protective order.

Retention of Rights of Former Partners

12) The EEOC’s proposed protective order includes a provision, § III.O, that makes clear that the order does not limit a former partner’s right, if any, to disclose Confidential Subsequent Employment Information pertaining to him- or herself.

13) To the extent that a former partner has the right to disclose the information subject to this order — for example, to members of his or her present firm, or to private counsel retained to assist the former partner in connection with this EEOC enforcement action — the parties to this action have no legitimate interest in attempting to limit that right.

Wherefore, the EEOC respectfully requests that the Court enter the proposed Protective Order Governing Subsequent Employment Information and Documents, attached as Exhibit A.

November 20, 2006

s/ Justin Mulaire
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