

**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 MEMORANDUM IN OPPOSITION TO
DEFENDANT’S MOTION FOR ENFORCEMENT OF RULING
REGARDING PRODUCTION OF CERTAIN DOCUMENTS**

Sidley’s motion seeks production of documents that its subpoenas do not request, whose production was not ordered, and/or for which Sidley has not made the threshold showing required by the Court for production of certain documents. Moreover, as the Court has stated that subsequent employment documents will only be produced under a new, “extraordinarily stringent” protective order, Sidley’s motion is premature because no such order has yet been entered. Sidley’s motion should be denied.

I. Production of Subsequent Employment Documents

At the October 6, 2006 hearing, the Court stated that it was “willing to require the production of” subsequent employment documents, “but it will be under an extraordinarily stringent protective order....” See October 6, 2006 Transcript of Proceedings, at 4-5, attached as Exhibit A. Moreover, the Court stated that such a protective order must expressly require that

“the [confidential subsequent employment] information will be produced only pursuant to a court order.” Id. A lengthy discussion on the record makes clear that before the court would issue an order requiring disclosure of a specific former partner’s subsequent employment information, Sidley would have to establish a threshold need for that information, and an individualized determination of Sidley’s need for that information would then be made. See id. at 16-17, 20-23. This discussion plainly envisioned a subsequent, individualized determination of what subsequent employment documents would be required for each former partner.

Moreover, although it is not mentioned in Sidley’s motion, Sidley only asked for information concerning hours, billing, business generated, and business development efforts in subpoenas issued to six class members. As articulated more fully in the motion the EEOC filed on November 17, 2006, Sidley cannot demonstrate a genuine need for this information for any of those six — in part because the EEOC is prepared to stipulate to the only disputed facts to which such information could conceivably be relevant. See EEOC’s November 17, 2006 Motion for Protective Order (Document No. 105).

Regardless of whether Sidley can make the required individualized showing with respect to any of the six former partners in question, it has not yet attempted to do so. For this reason, the instant motion should be denied.

II. Redaction of Tax Returns

Sidley’s motion complains, in essence, that it did not receive tax documents and information that Sidley’s subpoenas do not ask for in the first place. Sidley’s subpoenas to former partners called for, inter alia:

2. All documents reflecting or relating to any Compensation you have received between October 1999 and the present, including, but not limited to Lines 7, 12, 14, and 21 and related schedules, forms, and pages from your 1999-2005 (inclusive) IRS Form 1040 U.S. Individual Income Tax Return.

3. To the extent not produced in response to Request No. 2, all other documents reflecting or relating to all Compensation, retirements benefits, pension benefits, bonuses, and/or stock options you have either received or expect to receive from all Employment or Self-Employment you have held since leaving Sidley.

See, e.g., Document Requests to a Former Partner, Nos. 2-3, attached as Exhibit D to Defendant's Motion for Enforcement of Ruling Regarding Production of Certain Documents (emphases supplied).

On November 15, 2006, in advance of his deposition, a former partner produced to Sidley his federal income tax returns for the years 1999-2005, with items that do not pertain to compensation redacted. This class member testified at his deposition that all compensation he received during the years 1999-2005 was reflected in the unredacted portions of his tax returns. Items redacted included passive investment income, other income that is not compensation for work, itemized deductions, spouses' social security numbers, etc. The redacted information, which often concerns the business activities of a spouse or tax credits claimed by a class member is plainly irrelevant to this action — which is likely why Sidley did not think to request it in its subpoenas.

All information concerning earned income, active investment income, partnership income, pension benefits and other retirement income was left unredacted, and schedules and forms related to that information were produced. Sidley has requested no more.

Rather than identifying any actual need for the redacted information, Sidley's motion rests on the mistaken proposition that the Court ordered class members to provide more than the compensation data that Sidley's subpoenas requested. It did not, and the instant motion should be denied.

Respectfully submitted,

November 20, 2006

s/ Justin Mulaire
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