

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

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

**PLAINTIFF EEOC’S MOTION TO COMPEL PRODUCTION OF CLIENT
COMPLAINT INFORMATION OR TO PRECLUDE RELIANCE THEREON**

Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) respectfully moves this Court, pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to compel Defendant Sidley Austin, LLP (“Sidley”) to produce information and documents concerning complaints made by firm clients about the performance of the firm’s partners, including the details of complaints allegedly made by clients about several attorneys (“Demoted Partners”) who were stripped of their partner status in 1999 (“1999 status changes”). Sidley has provided no documentation (either correspondence from clients or internal documents from the time of the supposed complaints) that would substantiate the existence or nature of the purported client complaints, and has identified no client representatives with knowledge of such complaints. Sidley has refused to provide any information whatsoever concerning complaints about non-demoted partners, unfairly preventing the EEOC from identifying appropriate comparators and obtaining evidence of pretext.

In the alternative, the EEOC moves this Court, pursuant to Rule 37(d), for an order precluding Sidley from relying upon evidence of client complaints in its defense of this action.

In support of this application, the EEOC states:

1. In response to an EEOC interrogatory, Sidley stated that it decided to change the partner status of the Demoted Partners due to complaints that various (often unidentified) clients had made about the Demoted Partners at unspecified times. See, e.g., Supplemental Amended Exhibit D to Defendant Sidley Austin Brown & Wood LLP's Response to EEOC's First Set of Interrogatories, attached as Exhibit 1, at pp. 8, 17, 22, 24, 30, 44, 46.¹

2. In order to identify appropriate comparators and obtain evidence of pretext, the EEOC issued an interrogatory that called for Sidley to "[i]dentify all client complaints received by Sidley about any partner of Sidley in the years from 1995 through 1999," as well as certain information about those complaints, such as the substance of the complaints and the names of client contacts with knowledge of the complaints. See Sidley Austin LLP's Response to EEOC's Sixth Set of Interrogatories, Interrogatory No. 19, at p. 13, attached as Exhibit 2.²

3. The EEOC also issued a request, pursuant to Rule 34, for "documents related to any client complaints received by Sidley about any partner in the years 1995 through 1999, including documents sufficient to show any response by Sidley to the complaint and any discipline, reduction in compensation, or change in status for the partner about whom the complaint was received." See Plaintiff EEOC's Fifth Request for the Production of Documents, Request No. 19, p. 4, attached as Exhibit 3.³

4. Sidley objected to the above-noted interrogatory and document request concerning client complaints "to the extent they seek the disclosure of names or contact information for client representatives, confidential business information, and information

1 Exhibit 1 will be filed only under seal, as it contains Confidential Information governed by the Amended Protective Order entered on June 20, 2006.

2 Exhibit 2 will be filed only under seal, as it contains Confidential Information governed by the Amended Protective Order entered on June 20, 2006.

3 Exhibit 3 will be filed only under seal, as it contains Confidential Information governed by the Amended Protective Order entered on June 20, 2006.

protected by the attorney-client privilege and/or work-product doctrine. To the extent the interrogatories require identification of client representatives, the EEOC's interrogatories are intended to harass Sidley." See Exhibit 2, at p. 1. Defendant also objected on the grounds that the requests were overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence," id. at 14, and cited a list of "General Objections," id., Appendix A.⁴

5. "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). If a party fails to answer an interrogatory or respond to a document request, the discovering party may move for an order compelling an answer to the interrogatory or compelling a response to the document request. See Fed. R. Civ. P. 37(a)(2). Alternatively, if a party fails to respond to such discovery requests, the court may make such other orders as are just, see Fed. R. Civ. P. 37(d), including "[a]n order ... prohibiting that party from introducing designated matters in evidence," see Fed. R. Civ. P. 37(b)(2)(B).

6. The client complaint information sought by the EEOC is relevant to Sidley's defense in this action because Sidley has alleged that such complaints motivated the firm's 1999 status changes. In order to show that this proffered reason is pretextual, the EEOC is entitled to discover what complaints the firm's clients made concerning other partners at Sidley and what actions, if any, the firm took in response to those complaints.⁵ If Sidley's reactions to other partners' complaints differed significantly from alleged reactions to complaints lodged against the Demoted Partners, this will help establish that client complaints did not actually motivate the

⁴ Counsel to the parties conferred by telephone in an attempt to resolve the instant dispute at approximately 10:30am on October 10, 2006, but were unable to do so.

⁵ It is Sidley that has maintained that all partners were considered for the 1999 status change; accordingly client complaints for all partners are needed to conduct a complete evaluation of comparator data.

1999 status changes. Therefore, the requested information and documents are plainly probative of the issue of pretext.

7. The interrogatory and document request at issue are not overbroad or unduly burdensome. The requests are not the result of conjecture or guesswork on the part of the plaintiff, but rather seek comparator data on a factor that the defendant itself has identified as a motivating factor in firm's decisions about partner status. Although Sidley has not made clear the dates of the various client complaints that it cites to explain the 1999 status changes, the EEOC has confined the scope of its request to the period immediately prior to the status changes, 1995-1999. The fact that the plaintiff has asked Sidley to identify third parties with knowledge of the alleged complaints is not a result of any intent to harass the defendant, but rather a legitimate interest in verifying the existence and details of the alleged complaints from individuals other than the defendant's own personnel. (The Demoted Partners are in many cases unaware of the existence of such complaints, let alone their substance or particulars.)

8. To the extent that client confidences or the work product doctrine preclude Sidley from responding to the discovery requests about Demoted Partners or other partners' client complaints, it would be unjust to permit Sidley to rely selectively upon partial client complaint data about the Demoted Partners to explain the 1999 status changes. If Sidley cannot divulge the requested information about client complaints — fully and for all partners — then Sidley should, in fairness, be precluded from relying upon any evidence of client complaints in its defense of this action.

9. Wherefore, the EEOC respectfully requests that Sidley be directed to respond to the EEOC's interrogatory and document request concerning client complaints. In the alternative, if Sidley will not or cannot provide the requested information, the EEOC respectfully requests

that Sidley be precluded from relying upon any documents or testimony pertaining to client complaints in its defense of this action.

January 23, 2007

Respectfully Submitted,

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