

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

UNITED STATES EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	Case No. 05 CV 0208
)	
Plaintiff,)	Honorable James B. Zagel
)	
v.)	Magistrate Judge Ashman
)	
SIDLEY AUSTIN LLP,)	
)	
Defendant.)	

**SIDLEY AUSTIN LLP’S REQUEST
FOR A BRIEFING SCHEDULE ON THE EEOC’S PENDING MOTIONS**

Defendant Sidley Austin LLP (“Sidley”) responds to Plaintiff United States Equal Employment Opportunity Commission’s (“EEOC”) Motions to Compel (1) Disclosure of Legal Advice Rendered to the Firm by a Former Partner; and (2) Production of Client Complaint Information or to Preclude Reliance Thereon as follows:

1. The EEOC has filed two motions to compel, both of which violate the EEOC’s obligations to meet and confer.
2. Although the EEOC stated that it will “not oppose a reasonable briefing schedule” at the hearing, the EEOC refused to agree to any briefing schedule in response to Sidley’s request, stating instead that it wanted to appear before the Court on this issue. (Ex. A, January 24, 2007 E-mail from J. Mulaire to M. Solís.) Sidley has proposed, subject to Court approval, the following briefing schedule on these motions: Sidley has ten days (to February 2, 2007) to respond to the EEOC’s motions, and the EEOC has seven days thereafter (to February 9, 2007) to reply. For the reasons stated below, the Court should grant Sidley ten days in which to respond to the EEOC’s motions.

I. Motion To Compel Disclosure Of Legal Advice.

3. The EEOC has moved this Court for an order finding that Sidley has placed the substance of one of its former partner's legal advice to the firm at issue in this litigation, requiring Sidley to respond to discovery requests pertaining to that legal advice. The former partner is represented by the EEOC in this proceeding.

4. Sidley and the EEOC met and conferred on this issue on January 18, 2007. Sidley requested that the EEOC permit Sidley to communicate with the former partner at issue to discuss the content of the privileged information at issue. The EEOC refused to permit Sidley to talk to the former partner. In addition, in a further attempt to reach an agreement on a broader waiver to advance this matter without involvement of the Court, Sidley agreed to inform the EEOC on or before January 31, 2007 whether it will introduce evidence relating to advice of counsel as to the issue raised in the EEOC's motion as well as leading up to the change in status decisions in the fall of 1999. (Ex. B, January 19, 2007 letter from M. Conway to L. Elkin.)¹ A decision by the firm that it will not introduce evidence relating to advice of counsel, or in the alternative that it will introduce such evidence and will agree to waive privilege associated with that advice, will render the EEOC's motion moot.

5. As such, the EEOC's motion is premature and the Court should defer decision on the EEOC's motion at least until after January 31, 2007, by which time Sidley will have made a decision on whether it will voluntarily waive privilege with respect to the issue raised in the EEOC's motion and on legal advice leading up to the change in status decisions in 1999, as well

¹ References are to exhibits attached to this response. Confidential Information has been redacted from the publicly-filed versions of Exhibits B-C, and unredacted copies have been provided to counsel and the Court.

as the conditions under which such waiver would be made. If the issue is not resolved by then, Sidley can file an opposition to the EEOC's motion no later than February 2.

II. Motion To Compel Production Of Client Complaint Information.

6. In this motion, the EEOC seeks to preclude Sidley from relying on client complaints unless Sidley discloses "all client complaints received by Sidley regarding any Sidley partner in the years 1995-1999" (Ex. 2 to EEOC's Motion To Compel Production of Client Complaint Information, EEOC Interrogatory No. 19 (6th Set)) and produces "all documents related to any client complaints received by Sidley about any partner in the years 1995 through 1999[.]" (Ex. 3 to EEOC's Motion, EEOC's Document Request No. 19 (5th Set).)

7. In its interrogatory answer listing Sidley's reasons for changing the status of certain partners in 1999 (Ex. 2 to the EEOC's Motion to Compel Disclosure of Legal Advice Rendered to the Firm, Supplemental Amended Exhibit D), Sidley referred to client complaints as contributing to the decision to change the status of 7 of 33 putative claimants. Sidley has agreed that, if the EEOC will identify comparators for those 7 individuals, Sidley will agree to provide the EEOC any information possessed by the firm's Executive Committee or Management Committee regarding client complaints for those comparators. (Ex. C, October 23, 2006 Letter from M. Solís to L. Elkin.)

8. Sidley and the EEOC met and conferred on October 6, 2006 and again on November 7, 2006 with respect to the EEOC's overbroad and unduly burdensome interrogatories and document requests. On November 7, 2006, the EEOC refused to limit its request for client complaints to yet to be identified comparators of the 7 putative claimants for whom client complaints were an identified issue, but agreed that it would review its document requests and to attempt to narrow the scope of the requests. Sidley did not hear back from the EEOC on this issue until the EEOC filed this motion over two months later.

9. Sidley should be permitted to file a brief providing the reasons why this information should be limited to comparators to be identified by the EEOC.

WHEREFORE, Sidley respectfully requests that the Court grant it ten days (until February 2, 2007) in which to fully respond to the EEOC's motions.

Dated: January 24, 2007

Respectfully submitted,

SIDLEY AUSTIN LLP

By: /s/ Maile H. Solís
One of Its Attorneys

Gary M. Elden (#0728322)
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CERTIFICATE OF SERVICE

I, Maile H. Solís, an attorney, hereby certify that on **January 24, 2007**, I caused a true and complete copy of the foregoing **SIDLEY AUSTIN LLP'S REQUEST FOR A BRIEFING SCHEDULE ON THE EEOC'S PENDING MOTIONS** to be served by Electronic Mail Transmission via ECF as to Filing Users upon the following:

John C. Hendrickson (john.hendrickson@eoc.gov)
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500 West Madison Street
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/s/ Maile H. Solís
Maile H. Solís

EXHIBIT A

From: "JUSTIN MULAIRE" <JUSTIN.MULAIRE@EEOC.GOV>
To: "Maile Solís-Szukala" <msolis@gripoelden.com>
Date: Wednesday, January 24, 2007 9:43:35 AM
Subject: Re: Sidley/EEOC: Your motions

Maile-

We believe we should stick with the hearing tomorrow, to hear what questions or comments the judge has in connection with setting a briefing schedule. At the hearing, however, the EEOC will not oppose a reasonable briefing schedule.

-Justin

>>> "Maile Solís-Szukala" <msolis@gripoelden.com> 01/23 9:19 PM >>>
Justin and Laurie,

We received your motions today. Will you agree to a briefing schedule? I understand that Judge Zagel is out from January 29-February 8, so that his first available hearing date after his vacation would be February 13. Accordingly, I propose that we have ten days (to Friday, February 2) to respond to your motions, and you have 7 days (to Friday, February 9) to reply. This will give Judge Zagel the weekend before the hearing to consider both parties' papers. We are open to considering an alternative briefing schedule if you have another proposal. Please let me know if you will agree, and we can work on getting the hearing put over to Feb. 13.

Thanks,
Maile

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EXHIBIT B

REDACTED



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January 19, 2007

By Facsimile

Justin Mulaire
Laurie S. Elkin
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

Re: EEOC v. Sidley Austin LLP

Dear Justin and Laurie:

We received Laurie's letter of January 18, 2007. You indicated that the EEOC plans to file "a motion with the Court seeking a date certain by which Sidley is required to inform the EEOC of its final position with respect to whether it will rely on advice of counsel in defense of this action." You also indicated that you were refusing our request to speak with [redacted] about privileged matters on which he provided legal advice to the firm outside the presence of the EEOC.

Your refusal to agree that Sidley can confer with [redacted] about privileged advice that he gave to the firm is entirely unreasonable. Please let us know whether you conferred with [redacted] on this matter and whether he agrees with the EEOC's position.

While your cooperation on this issue might have expedited our decision, Sidley will decide and inform the EEOC on or before January 31, 2007 as to whether Sidley will introduce evidence relating to advice of counsel. There are a number of individuals who need to be consulted on this issue and their schedules will not allow an earlier response.

The EEOC has asserted that the time sensitivity of this issue arises from deposition scheduled for February 15, 2007. We trust that disclosure of Sidley's position two weeks before the deposition should give the EEOC adequate time to fully prepare.

Very truly yours,


Michael P. Conway

EXHIBIT C

REDACTED



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October 23, 2006

VIA ELECTRONIC MAIL

Laurie Elkin
Justin Mulaire
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street, Suite 2800
Chicago, Illinois 60661

Re: **EEOC v. Sidley Austin LLP**

Dear Laurie and Justin:

This will follow up on our discussions regarding the EEOC's Document Request Nos. 7 and 8 (6th Set), asking for inspection and copying of Sidley's Peoplesoft and other administrative databases, and Interrogatory No. 19 (6th Set), asking for "all client complaints received by Sidley regarding any Sidley partner in the years 1995-1999." Sidley has objected to these requests as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving these objections, Sidley is willing to offer the following compromises.

Sidley will agree to provide within 14 days: (1) a written description of the contents of its Peoplesoft, Elite and Partner Accounting databases (the three databases containing administrative, personnel financial and other information for partners); and (2) a list of fields that contain data. Sidley will then make one or more of its IT personnel available to meet with someone from the EEOC's IT department to answer any questions the EEOC may have about that information.

are the individuals with client-related issues identified in Supplemental Amended Exhibit D. If the EEOC is willing to identify comparators for these individuals, based on its and the putative claimants' current information, Sidley will provide, within 21 days, any information possessed by the Executive Committee or Management Committee regarding client complaints for those comparators. We assume the EEOC will



Laurie S. Elkin
October 23, 2006
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identify comparators as similarly-situated individuals, discussed in *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612 (7th Cir. 2000).

Please let us know if you will agree to the terms of our proposed compromise.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line and a large, decorative flourish.

Maile H. Solís-Szukala

MHS/db