

EXHIBIT A

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

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

**SIDLEY AUSTIN BROWN & WOOD’S OBJECTIONS TO
EEOC’S SUBMISSION REGARDING NOTIFICATION OF INDIVIDUALS**

Sidley submits these objections to the EEOC’s “suggestions” regarding the procedure for notifying individuals and requests oral argument.

A. Scope of Notification To Individuals.

In its Submission, the EEOC seeks to limit notification to personnel files only.¹ The case law² and general notions of fairness require that individuals be notified not only of the potential disclosure of their personnel files but also of any performance-related information that might not be kept in a personnel file. There is no valid reason for notifying individuals of one category of documents but not the other.

B. The Objection Process.

Sidley proposes that persons wishing to register objections do so by mailing a written objection to the Court and the parties. The EEOC, however, proposes that any person wishing to object be made to “appear personally in Court to state his or her objection under oath.” This

¹ The EEOC’s reliance on the Court’s use of the phrase “file” (“if you have an individual personal objection to this, because of what is in your file . . .”) (Transcript of 8/11/05 Hearing at 13:18-21) is misplaced. The Court did not appear to intend to limit notification strictly to personnel files and to not include performance-related information, which may be equally or more personal.

² See Sidley’s Response and Sur-Reply in support of its Proposed Protective Order.

serves no purpose other than to inconvenience, and potentially embarrass, objectors, with the obvious consequence of deterring or discouraging objections. The identities of the 32 attorneys whose status changed to counsel or senior counsel in 1999/2000 remain confidential and have not been revealed publicly. Sidley has requested in its Proposed Protective Order that the names of those individuals remain confidential. Requiring any of the 32 to appear in open court in order to register objections would reveal the identities of the individuals and the very information that is the subject of the objection to disclosure, thus making the entire process highly prejudicial to the individuals involved.

C. Sidley's Communication With Individuals.

Sidley believes it has the right to talk to any of the individuals involved (a number of whom continue to practice at Sidley), and any individual counsel they may have. However, the EEOC proposes that Sidley and its attorneys be barred from "counsel[ing]" or "discuss[ing]" the production of the requested documents, or any objections thereto, with any of the individuals. The EEOC, on the other hand, would be free to speak with individuals both about their files and objections. Although the EEOC claims to be making this "suggestion" in order to ensure that the procedure is "fair and impartial," this one-way limitation hardly seems designed to meet that professed objective. The EEOC's proposal is also impractical. In order to know whether they have an objection to the production of their files, individuals may want to ask Sidley about the documents it intends to produce.

D. Providing Private Information To The EEOC.

As part of the EEOC's elaborate notification process, the EEOC proposes that material to which individuals have an objection be produced to the EEOC on an attorneys'-eyes-only basis prior to a hearing on the objection. As the Court recognized, however, there is a chance (albeit minimal) that an individual could succeed on an objection to the production of his or her information to the EEOC itself. (8/11/05 Transcript at 20:11-22.) Providing information to the

EEOC prior to a hearing on the objection, therefore, would defeat the purpose of this process if the Court were to sustain the objection. If the Court overrules the objection, the information can then be produced on an attorneys'-eyes-only basis to the EEOC before any further ruling on an objection to disclosing the information beyond the EEOC.

E. Use Of Excluded Information For Claims And Defenses.

The EEOC's "suggestion" that if the Court excludes material from production Sidley cannot later use such information in support of its defenses is premature. This is an important matter that can be raised and addressed as and when the issue becomes mature on a full record.

Dated: August 23, 2005

Respectfully submitted,

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