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

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| **UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,** | ) | |
| **Plaintiff,** | ) | **Civil No. 05 cv 0208** |
| **v.** | ) | **Judge Zagel** |
| | ) | **Magistrate Ashman** |
| **SIDLEY AUSTIN BROWN & WOOD,** | ) | |
| **Defendant.** | ) | |

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO DETERMINE THE SUFFICIENCY OF RESPONSES TO REQUESTS TO ADMIT FACTS**

Defendant Sidley Austin Brown & Wood ("Sidley") has served answers to Plaintiff EEOC's Requests to Admit which fail to comply with the requirements of Rule 36 of the Federal Rules of Civil Procedure and which frustrate the very purpose of the Rule. Rather than providing specific and direct responses as is required by the Rule, Sidley has responded with paragraphs, and in some cases pages of self-serving extraneous material that does not meet the substance of the requests.

Pursuant to Rule 36(a), Sidley should be deemed to have admitted without qualification the matters specified in request nos. 3, 6, 8, 10, 12, 13, 14, 15, 16, 18, 21, and 23 of the EEOC's First Request for Admissions.

## I. Background

On October 3, 2005, EEOC served on Sidley EEOC's First Request for Admissions. Exhibit A. Sidley served its Responses to EEOC's Requests on November 16, 2005. Exhibit B. EEOC found Sidley's responses insufficient in that rather than admitting or denying the requests,

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Sidley repeatedly inserted extraneous material into its responses that did not meet the substance of the requests. Accordingly, on January 26, 2006, EEOC wrote Sidley a letter requesting that Sidley revise its answers so as to comply with Rule 36. Exhibit C. On March 22, 2006, Sidley served EEOC with Amended and Supplemental Responses to EEOC's First Request for Admissions. Exhibit D. Sidley's Amended and Supplemental Responses do not cure the deficiencies of its initial responses. Rather, in its Amended and Supplemental Responses Sidley continues to insert non-responsive factual material that serves its own view of the case and then admits or denies the request only in light of the additional factual material.

## II. <u>Requirements and Purpose of Rule 36</u>

Requests to admit serve the important purpose of saving time, trouble and expense by "establish[ing] the truth or genuineness of a matter in order to eliminate the need to prove a matter at trial or to the limit the triable issues of fact." *Hanley v. Como Inn, Inc.*, 2003 WL 1989607 (N.D.Ill. 2003). Given the Rule's purpose of weeding out the facts, requests to admit "are not intended, as in the case of interrogatories, directed at similar matters, to ask the opposing party for a detailed response." *Diederich v. Department of the Army*, 132 F.R.D. 614 (S.D.N.Y. 1990).

Indeed, Fed. R. Civ. P. 36 provides very specific direction regarding the type of response that a request to admit requires. Under the Rule, the answering party must admit, deny or "set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter."

A responding party may qualify a response if a request is so complex or imprecise as to necessitate a qualification. However, the qualification must meet the substance of the requested admission. Fed. R. Civ. P. 36 (a).; *Bell, et al. v. Woodward Governor*, 2006 U.S. Dist. LEXIS

6348 (N.D.Ill. 2006)("a responding party that cannot readily admit or deny a request may make an admission with a qualification or deny only part of a request, so long as the response fairly meets the substance of the requested admission"). The qualification must be clear, specific and direct and must not contain superfluous, evasive, or argumentative material. *See, e.g., Knudson v. Moller et* al., 1987 U.S. Dist. LEXIS 7094 (N.D.Ill. 1987)(Court deemed unqualifiedly admitted responses that contained "superfluous argumentative material"); *Henry et al. v. Champlain Enterprises, et al.*, 212 F.R.D. 73 (N.D.N.Y. 2003)("qualifications are to provide clarity and lucidity to the genuineness of the issue and not to obfuscate, frustrate or compound the [issue]"); *Havenfield Corp. v. H & R Block*, 67 F.R.D. 93 (W.D.Mo. 1973)("Plaintiff's qualified answers to [the] requests . . . do not fully 'meet the substance of the requested admissions' in that the answers are nonspecific, evasive, ambiguous and appear to go the accuracy of the requested admissions rather than the 'essential truth' contained therein"). Qualification is not permitted in response to requests which are capable of a yes or no response. *See, e.g., Diederich*, 132 F.R.D. at 619 (qualification not appropriate where "requests appear capable of a yes or no response"); *Havenfield Corp.*, 67 F.R.D. at 97 (requests not "so complex or imprecise so as to necessitate qualified responses. In fact, defendant's statements of fact are couched in general, unequivocal terms which appear to facilitate unequivocal admissions or denials").[1]

Under Rule 36(a), if the Court determines that an answer to a request to admit does not comply with the requirements of the Rule, it may order either that the matter is admitted or that

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[1] Nothing in Rule 36 prevents Sidley from presenting the extraneous material at trial or in response to or in support of any motion for summary judgment. However, setting such materail forth in response to a request to admit is not permitted.

an amended answer be served.

## III. Requests as to Which Responses Are Insufficient

In response to simple direct requests which can be readily admitted or denied, Sidley has improperly qualified its answers with self-serving extraneous material. Given that Sidley has already had the opportunity to amend its responses, the matters should be deemed admitted without qualification.

The insufficient responses are discussed individually below.

### A. Responses to Request Nos. 8 and 10

Request nos. 8 and 10 ask Sidley to admit that in specified years that persons with the title partner who were not members of the firm's Management or Executive Committees did not vote on whether to amend the partnership agreement.

In response, Sidley admits these statements but improperly includes additional editorial language that does not meet the substance of the requests. Specifically, Sidley's responses state:

> Sidley admits that . . . partners who were not members of the Management or Executive Committees did not vote on whether to amend Sidley's Partnership Agreement *but further states that many partners who were not members of the Management or Executive Committees were consulted regarding, and provided input for, proposed amendments to Sidley's Partnership Agreement.* (emphasis added)

The italicized portion of Sidley's responses is self-serving superfluous material that does not comply with Rule 36.

### B. Responses to Request Nos. 12 and 14

Request nos. 12 and 14 ask Sidley to admit that in specified years, Sidley's Executive Committee admitted additional partners without approval from partners not on the Executive

Committee.

In its responses, Sidley denies the requests, but once again adds additional self-serving material that does not fairly meet the substance of the requests. Specifically, after denying the requests, Sidley states:

> *through personal meetings with members of the Executive Committee, partners who were not members of the Executive Committee were consulted regarding, and provided input for, the decision to admit additional persons to the partnership.* (emphasis added).

C. Responses to Request Nos. 13 and 15

These requests ask Sidley to admit that in specified years no partner who was not a member of Sidley's Executive Committee voted on the admission of any other person as a partner. While these requests are capable of a straight admission or denial, Sidley admits these requests but again adds information that does not meet the substance of the requests and serves only to advance its version of events. Specifically, Sidley states:

> Sidley admits that, in the years . . . no partner who was not a member of Sidley's Executive Committee cast a vote on the admission of any other person becoming a partner at Sidley *but further states that through practice group and administrative committee meetings, among others, as well as through personal meetings with members of the Executive Committee, partners who were not members of the Executive Committee were consulted regarding, and provided input for, the decision to admit additional persons to the partnership.* (emphasis added)

The requests did not ask whether such partners were consulted or whether they provided input.

D. Response to Request No. 16

Request No. 16 asks Sidley to admit that in specified years no issue was presented for a vote to all Sidley partners. While again this request can and be answered with a simple

admission or denial, Sidley adds qualifying material that only obfuscates the matter. Sidley states:

> Sidley admits that . . . no issue was presented for a vote by all Sidley partners *but further states that through practice group and administrative committee meetings, among others, as well as through personal meetings with members of the Executive Committee, partners were consulted regarding and provided input for a broad spectrum of firm management and other issues.*

Obviously, the italicized portion of the response does not meet the substance of the request as the request does not ask whether partners were consulted about firm management issues.

E. Response to Request No. 18

This request asks Sidley to admit that a letter attached as an exhibit to the request is a true and accurate copy of a letter authored by Thomas Cole and Charles Douglas and addressed "To Our Clients, Alumni, Colleagues and Friends." The appropriate response under Rule 36 would be either that it is or that it is not a true and accurate copy of said letter. Rather than responding in this manner, however, Sidley admits that it is a true and accurate copy of said letter and additionally that it is *written to provide a non-confidential summary of "news" and "perspectives."* This editorial language does not meet the substance of the request as the request does not address the purpose for which the letter was written.

F. Response to Request No. 21

Request No. 21 asks Sidley to admit the truth of a statement made in its letter "To Clients" regarding a "change in [its] retirement policy (formerly age 65 and now a range of 60 to 65) and the related change in status of approximately 20 partners to senior counsel."

Rather than admitting or denying this request, Sidley qualifies its answer with three full

pages of self-serving statements detailing the history of its retirement policy dating back to 1972. Clearly, this response does not comply with Rule 36 as it is non-specific and replete with superfluous argumentative material.

G. Response to Request No. 23

This request asks Sidley to admit the truth of a statement made in its letter "To Clients" regarding the theme of certain changes being "the creation of opportunities for our younger lawyers." Again, while the statement is either true or not true, Sidley qualifies its response with self-serving material that does not meet the substance of the request. Among other things, Sidley's response refers to the performance of partners and the competitive position of the firm, neither of which are addressed in the request.

H. Response to Request Nos. 3 and 6

These Requests ask Sidley to admit that in specified years new members of the Executive Committee were selected by the existing members of the Executive Committee. Sidley neither admits nor denies these requests, but rather refers EEOC to its response to a wholly different request.

## IV. Conclusion

For the foregoing reasons, Sidley's responses to request nos. 3, 6, 8, 10, 12, 13, 14, 15, 16, 18, 21, and 23 are not sufficient. Wherefore, EEOC asks the Court to enter an order deeming these requests admitted without qualification.

Respectfully submitted,

s/ Justin Mulaire

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