

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 Zagel |
| |) | |
| v. |) | Magistrate Judge Ashman |
| |) | |
| SIDLEY AUSTIN BROWN & WOOD LLP, |) | |
| |) | |
| Defendant. |) | |

**SIDLEY AUSTIN LLP’S AMENDED AND SUPPLEMENTAL
RESPONSES TO EEOC’S FIRST REQUEST FOR ADMISSIONS**

Sidley Austin LLP (“Sidley”) provides the following amended and supplemental responses to Plaintiff United States Equal Employment Opportunity Commission’s (the “EEOC”) First Request for Admissions (the “Requests”):

RESPONSES AND OBJECTIONS

Sidley incorporates its general and specific objections to the EEOC’s First Request for Admissions into each of the amended and supplemental responses set forth below.

Request for Admission No. 1: Admit that the members of the Executive Committee of Sidley & Austin in years from 1990 through 2000 were selected by partners holding a majority of percentages.

RESPONSE: Sidley objects to the use of the undefined term “selected” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “selected” to mean “designated” within the meaning of Sidley’s applicable Partnership Agreement. (*See, e.g.,* Bates Nos. SA000293; SA000387.) Thus defined, Sidley admits that, in the years 1990-2000, members of the Executive Committee were selected by partners holding a majority of percentages.

Request for Admission No. 2: Admit that in the years from 1995 through 2000 individuals working at Sidley & Austin with the title partner who were not members of the Management or Executive Committees did not vote on the selection of members of the Management or Executive Committees.

RESPONSE: Sidley objects to the use of the undefined terms “working” and “selection” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “selected” to mean “designated” or “appointed” within the meaning of Sidley’s applicable Partnership Agreement. (*See, e.g.*, Bates Nos. SA000293; SA000387.) Thus defined, Sidley admits that, in the years 1995-2000, partners who were not members of the Management or Executive Committees did not vote on the selection of members of the Executive Committee or the Management Committee.

Request for Admission No. 3: Admit that in the years from 1995 through 2000 all new members of the Executive Committee at Sidley & Austin were selected by the Executive Committee.

RESPONSE: Sidley objects to the use of the undefined term “selected” as vague and ambiguous. Notwithstanding this objection, *see* Response to Request No. 1.

Request for Admission No. 4: Admit that in the years from 1995 through 2000 all new members of the Management Committee at Sidley & Austin were selected by the Executive Committee.

RESPONSE: Sidley objects to the use of the undefined term “selected” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “selected” to mean “appointed” within the meaning of Sidley’s applicable Partnership Agreement. (*See, e.g.*, Bates Nos. SA000292-293; SA000387.) Thus defined, Sidley admits that in the years 1995-2000 all new members of the Management Committee were selected by the Executive Committee.

Request for Admission No. 5: Admit that in the years from 1990 through 1995 individuals working at Sidley & Austin with the title partner who were not members of the Management or Executive Committees did not vote on the selection of members of the Management or Executive Committees.

RESPONSE: Sidley objects to the use of the undefined terms “working” and “selection” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “selected” to mean “designated” or “appointed” within the meaning of Sidley’s applicable Partnership Agreement. (*See, e.g.*, Bates Nos. SA000293; SA000387.) Thus defined, Sidley admits that, in the years 1990-1995, partners who were not members of the Management or Executive Committees did not vote on the selection of members of the Executive Committee or the Management Committee.

Request for Admission No. 6: Admit that in the years from 1990 through 1995 all new members of the Executive Committee at Sidley & Austin were selected by the Executive Committee.

RESPONSE: Sidley objects to the use of the undefined term “selected” as vague and ambiguous. Notwithstanding this objection, *see* Response to Request No. 1.

Request for Admission No. 7: Admit that in the years from 1990 through 1995 all new members of the Management Committee at Sidley & Austin were selected by the Executive Committee.

RESPONSE: Sidley objects to the use of the undefined term “selected” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “selected” to mean “appointed” within the meaning of Sidley’s applicable Partnership Agreement. (*See, e.g.*, Bates Nos. SA000292-293; SA000387.) Thus defined, Sidley admits that in the years 1990-1995 all new members of the Management Committee were selected by the Executive Committee.

Request for Admission No. 8: Admit that in the year[s] 1995 through 2000 individuals working at Sidley & Austin with the title partner who were not members of the Management or Executive Committee did not vote on whether to amend Sidley & Austin’s Partnership Agreement.

RESPONSE: Sidley objects to the undefined terms “working” and “vote” as vague and ambiguous. Notwithstanding this objection, Sidley states that Webster’s dictionary defines “vote” as a “*usually formal* expression of opinion or will in response to a proposed

decision.” Defining “vote” as a formal expression of opinion or will, Sidley admits that, in the years 1995-2000, 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.

Request for Admission No. 9: Admit that in the years from 1995 through 2000 the Executive Committee approved amendments to Sidley & Austin’s Partnership Agreement.

RESPONSE: Sidley admits that, in the years 1995-2000, the Executive Committee approved amendments to Sidley’s Partnership Agreement.

Request for Admission No. 10: Admit that in the years 1990 through 1995 individuals working at Sidley & Austin with the title partner who were not members of the Management or Executive Committee did not vote on whether to amend Sidley & Austin’s Partnership Agreement.

RESPONSE: Sidley objects to the undefined terms “working” and “vote” as vague and ambiguous. Notwithstanding this objection, Sidley states that Webster’s dictionary defines “vote” as a “*usually formal* expression of opinion or will in response to a proposed decision.” Defining “vote” as a formal expression of opinion or will, Sidley admits that, in the years 1990-1995, 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.

Request for Admission No. 11: Admit that in the years from 1990 through 1995 the Executive Committee approved amendments to Sidley & Austin’s Partnership Agreement.

RESPONSE: Sidley admits that, in the years 1990-1995, the Executive Committee approved amendments to Sidley’s Partnership Agreement.

Request for Admission No. 12: Admit that in the years from 1995 through 2000, Sidley & Austin's Executive Committee admitted additional persons as Partners without approval from partners not on Executive Committee.

RESPONSE: Sidley denies that it admitted additional persons to the partnership without approval from partners who were not members of the Executive Committee, and 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.

Request for Admission No. 13: Admit that in the years from 1995 through 2000, no partner who was not a member [of] Sidley & Austin's Executive Committee voted on the admission of any other person as partner in Sidley & Austin.

RESPONSE: Sidley objects to the undefined term "voted" as vague and ambiguous. Notwithstanding this objection, Sidley states that Webster's dictionary defines "vote" as a "*usually formal* expression of opinion or will in response to a proposed decision." Defining "vote" as a formal expression of opinion or will, Sidley admits that, in the years 1995-2000, 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 in 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.

Request for Admission No. 14: Admit that in the years from 1990 through 1995, Sidley & Austin's Executive Committee admitted additional persons as Partners without approval from partners not on Executive Committee.

RESPONSE: Sidley denies that, in the years 1990-1995, it admitted additional persons to the partnership without approval from partners who were not members of the Executive Committee, and 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.

Request for Admission No. 15: Admit that in the years from 1990 through 1995, no partner who was not a member [of] Sidley & Austin's Executive Committee voted on the admission of any other person as partner in Sidley & Austin.

RESPONSE: Sidley objects to the undefined term "voted" as vague and ambiguous. Notwithstanding this objection, Sidley states that Webster's dictionary defines "vote" as a "*usually formal* expression of opinion or will in response to a proposed decision." Defining "vote" as a formal expression of opinion or will, Sidley admits that, in the years 1990-1995, 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 in 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.

Request for Admission No. 16: Admit that in the years from 1990 through 2000, no issue was presented for a vote to all Sidley & Austin partners.

RESPONSE: Sidley objects to the undefined term "vote" as vague and ambiguous. Notwithstanding this objection, Sidley states that Webster's dictionary defines "vote" as a "*usually formal* expression of opinion or will in response to a proposed decision."

Defining “vote” as a formal expression of opinion or will, Sidley admits that, from 1990 through 2000, 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.

Request for Admission No. 17: Admit that the decision to offer a change in status to Sidley & Austin partners who were changed to counsel or senior counsel in the fall of 1999 was made by Sidley & Austin’s Executive Committee not by those to whom such a change was offered.

RESPONSE: Denied. Michael Miller made the decision to change status from partner to senior counsel.

Request for Admission No. 18: Admit that attached as Exhibit A is a true and accurate copy of a letter dated April 5, 2000 authored by Thomas Cole and Charles Douglas and addressed “To Our Clients, Alumni, Colleagues and Friends.”

RESPONSE: Sidley objects to the term “authored” as vague and ambiguous. Notwithstanding this objection, Sidley understands the term “authored” to mean the persons who signed the letter, rather than as including all persons who provided input into the contents of the letter. Thus defined, Sidley admits that Exhibit A is a true and accurate copy of a letter dated April 5, 2000 authored by Thomas Cole and Charles Douglas, addressed “To Our Clients, Alumni, Colleagues and Friends,” and written to provide a non-confidential summary of “news” and “perspectives”.

Request for Admission No. 19: Admit that on page 8 of Exhibit A, Msrs. Cole and Douglas refer to a “series of measures” adopted in October 1999.

RESPONSE: Sidley objects to the reference to one phrase taken out of context and states that all such references need to be placed in context, including Sidley’s Answer and its discovery responses, as each may be amended from time to time, to understand their meanings.

Notwithstanding this objection, Sidley admits that Exhibit A is a letter signed by Messrs. Cole and Douglas and that it states, among other things, “In October, the Executive Committee adopted a series of measures designed to improve the Firm’s competitive position.”

Request for Admission No. 20: Admit that on page 8 of Exhibit A, Mssrs. Cole and Douglas state that the series of measures included a “change in our 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.”

RESPONSE: Sidley objects to the reference to one phrase taken out of context and states that all such references need to be placed in context, including Sidley’s Answer and its discovery responses, as each may be amended from time to time, to understand their meanings. Notwithstanding this objection, Sidley admits that Exhibit A is a letter signed by Messrs. Cole and Douglas and that it states, among other things, “Press attention to these changes focused principally on the change in our 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. The press also noted that approximately 15 partners changed to counsel status.”

Request for Admission No. 21: Admit that the statement made by Mssrs. Cole and Douglas on page 8 of Exhibit A and quoted in Paragraph 20 herein is true.

RESPONSE: At the request of the EEOC, Sidley provides the following context for the quoted statement in order to provide a further response to this request. This context is a qualification to Sidley’s response to this Request for Admission and is integral to understanding that response.

For many years, there was a perception in the business world that participants in the work force would continue to be employed until age 65, which was widely perceived as a “normal” retirement age. There was a similar perception in professional firms, including law firms, that age 65 was the “normal” retirement age, though partners often retired earlier or later.

Upon the 1972 merger of the Sidley and Liebman Williams firms, age-related retirement criteria were removed from the Sidley Partnership Agreement. (The prior Sidley agreement used 77 – not 65 – as a retirement age.) From the time of the merger until today, there has been no provision requiring a partner to retire and thus no age-related retirement provision in the Partnership Agreement. However, there were two respects in which age was addressed in the Partnership Agreement: (i) at age 65, partners had to leave the Management, Executive and other administrative committees to ensure non-disruptive and predictable management succession; and (ii) at age 65, partners gained the unconditional right to withdraw funds from their accrual accounts. These provisions, coupled with the availability upon retirement at age 65 of enhanced benefits under Social Security and Medicare, contributed to a perception at Sidley, already common in business and professional firms generally, that age 65 was a “normal” retirement age. As noted above, a number of partners chose to retire before 65, even in their 50s, and many continued to work beyond 65, some well into their 70s. Indeed, of the 157 partners who have withdrawn since 1994, only 8 (or 5%) actually retired between ages 64 and 66. The relevant criteria were always a partner’s individual circumstances and ability to perform consistent with the expectations for partners, not age.

For many years prior to 1999, an informal practice developed of not encouraging departure of underperforming partners who were approaching age 65. These partners were instead allowed to remain partners until age 65 so they could “retire” gracefully at the perceived “normal” time without the true reason for departure (performance and/or a reduction in demand for services) being apparent. During and prior to 1999, there was occasional discussion concerning the desirability for ending this practice, a discussion sometimes phrased in terms of reducing the “retirement age” or changing the “retirement policy,” or “retirement expectations.”

In addition, some minimal steps were taken in the mid-to-late 1990s to further address this issue. In particular, underperforming partners approaching age 65 might be asked about retirement in a way that suggested they plan for it. This was thought to be a more tactful and gentle way of discussing the issue with longstanding partners rather than confronting them with performance-related criticisms.

In 1998 and 1999, the Management Committee concluded, with the concurrence of the Executive Committee, that Sidley's traditional strict performance standards had been relaxed for too many partners at the same time that Sidley was facing challenges in an increasingly competitive and changing market. As part of a multi-faceted program to improve Sidley's competitive position, the Executive Committee decided to reinstitute application of its strict standards for all partners, even those approaching age 65, who in the future would not be afforded differential and more favorable treatment.

In early 1999, applying these strict standards, Sidley reduced the compensation of a number of underperforming partners, who were transitioned from having full equity participation to having their compensation partially guaranteed. These changes covered a range of partners of varying ages. As competitive concerns continued in 1999 and as the performance of some partners did not improve, firm management determined that more decisive and visible action was necessary. The Management and Executive Committees considered termination of underperforming partners (the most common approach at peer firms) but decided this was inconsistent with the Firm's culture and prior approach. The Committees instead decided on a middle course of changing certain partners' status to "counsel" or "senior counsel." The Committees also decided to make clear there would no longer be any relaxation of traditional

performance standards to carry underperforming partners nearing 65 until they “retired” at that age.

Sidley’s management believed that it needed to announce these new expectations; that is, that continued performance at the level expected of a partner would be required to remain as a partner in the Firm. The Firm also announced that age 65 was no longer the “expected” retirement age and instead that the expectation was that retirement could occur flexibly between ages 60-65. There were several reasons for announcing this latter change: (i) to eliminate any implicit assurance that partners thought they had that, if they chose to remain partners until age 65, they would be allowed to continue as partners to that age without regard to performance; (ii) to alert partners to make financial plans accordingly; and (iii) to create an environment whereby underperforming partners under age 65 could “retire” gracefully without it being obvious that their termination as partners was performance-related.

As noted in its initial response, and subject to the above qualifications, Sidley admits that the statements made at page 8 of Exhibit A quoted in paragraph 20 are true.

Request for Admission No. 22: Admit that on page 8 of Exhibit A Messrs. Cole and Douglas in referring to the series of measures, state “the underlying theme of all of these changes was the creation of opportunities for our younger lawyers.”

RESPONSE: Sidley objects to the reference to one phrase taken out of context and states that all such references need to be placed in context, including Sidley’s Answer and its discovery responses, as each may be amended from time to time, to understand their meanings. Notwithstanding this objection, Sidley admits that Exhibit A is a letter signed by Messrs. Cole and Douglas and that it states, among other things, “Equally, if not more important were other key changes – heightened emphasis on practice development, starting with giving even greater attention to existing clients and an expansion of the ways we can serve them; and improvements

in associate training and evaluation. The underlying theme of all of these changes was the creation of opportunities of our younger lawyers.”

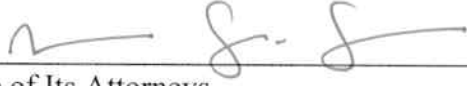
Request for Admission No. 23: Admit that the statement made by Messrs. Cole and Douglas on page 8 of Exhibit A and quoted in paragraph 22 herein is true.

RESPONSE: At the request of the EEOC, Sidley provides the following context for the quoted statement in order to provide a further response to this request. The context is a qualification to Sidley’s response to this Request for Admission and is integral to understanding that response.

The underlying reasons for the changes in status of partners to counsel or senior counsel were their performance, their contribution to the firm and the need to improve Sidley’s competitive position, as stated at page 8 of Exhibit A and provided in deposition testimony to date. Together with other measures relating to practice development for new and existing clients, improvements in associate training and evaluation, and review and reduction of costs and expenses, these decisions were intended to improve Sidley’s competitive position overall, and to create opportunities for other Sidley lawyers, both younger and older. Certain aspects of the measures, such as improvements in associate training and evaluations, had a greater impact on younger lawyers. Notably, the quoted language appears in a paragraph directly related to those measures taken to create opportunities for younger lawyers. As noted in its initial response, and subject to the above qualifications, Sidley admits that the statements made at page 8 of Exhibit A and quoted in paragraph 22 are true.

Dated: March 22, 2006

SIDLEY AUSTIN LLP


By: 
One of Its Attorneys

Gary M. Elden
Lynn H. Murray
Maile H. Solis-Szukala
GRIPPO & ELDEN LLC
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 704-7700
Facsimile: (312) 558-1195

CERTIFICATE OF SERVICE

I, Maile H. Solís-Szukala, an attorney, hereby certify that on **March 22, 2006**, I caused a true and complete copy of the foregoing **SIDLEY AUSTIN LLP'S AMENDED AND SUPPLEMENTAL RESPONSES TO EEOC'S FIRST REQUEST FOR ADMISSIONS** to be served via Electronic Mail upon the following:

Deborah L. Hamilton (deborah.hamilton@eoc.gov)
Laurie Elkin (laurie.elkin@eoc.gov)
UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661



Maile H. Solís-Szukala