

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

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

**PLAINTIFF EEOC’S MOTION TO DISQUALIFY DEFENDANT’S COUNSEL
FROM REPRESENTING ONE NON-PARTY WITNESS**

Plaintiff United States Equal Employment Opportunity Commission (“EEOC”) respectfully moves this Court, pursuant to Local Rule 83.51.7(b), to disqualify counsel to Defendant Sidley Austin, LLP (“Sidley”), from representing William B. White, an individual non-party witness who is now retired but was Sidley’s Financial Director at the relevant time. In support of this motion, the EEOC states as follows:

1. William B. White (“White”) was the author of an October 21, 1999 letter, addressed to the United States Social Security Administration, which made the following representation: “it is the general policy of Sidley & Austin not to permit a partner of the firm to continue as a partner commencing the first of the year following the year age 65 is reached.” See Letter from William B. White to Social Security Administration (“Social Security letter”), attached as Exhibit A.¹ Inasmuch as this Age Discrimination in Employment Act case alleges that Sidley has unlawfully maintained an age-based retirement policy, the Social Security letter

¹ Although Exhibit A is marked “Confidential,” Defendant has withdrawn that confidentiality designation. A copy of the document without the designation has not yet been provided to the EEOC.

and the role of its author are evidentiary matters which go to the heart of the case and which are potentially fatal to certain of Sidley's defenses.

2. At the February 23, 2006 deposition of Virginia L. Aronson ("Aronson"), Gary M. Elden, counsel to Sidley interrupted questioning by EEOC counsel John Hendrickson and — *before any direct questions had been asked about the Social Security letter* — interjected, "The Social Security letter is wrong.... The letter is wrong." See Transcript of Deposition of Virginia L. Aronson, p.192, relevant portions of which are attached as Exhibit B.

3. Thereafter, at the same February 23, 2006 deposition, Aronson, a member of the Defendant's Management Committee, testified that the Social Security letter "is untrue." See Exhibit B, at p.195.

4. On May 22, 2006, in response to several requests to admit, served on Sidley by the EEOC, Sidley denied that the statement contained in the Social Security letter was an accurate statement of Sidley policy. See Sidley Austin, LLP's partial response to the EEOC's Second Request for Admissions, p.2, relevant portions of which are as Exhibit C.

5. In an April 26, 2006 letter to the EEOC, Sidley's counsel advised that they now represent White and that inquiries of White should be directed to Sidley's counsel. See Letter from Maile H. Solis-Szukala to EEOC Trial Attorney Laurie Elkin, attached as Exhibit D.

6. Since Sidley and its counsel have already taken the position that White made a false statement in the Social Security letter, and since Sidley has an extraordinarily strong interest in demonstrating that White made a false statement in the Social Security letter (whatever the implications of that demonstration for White), Sidley's counsel's representation of White in connection with this matter is materially limited by counsel's responsibility to Sidley, in violation of Local Rule 83.51.7(b).

7. For the reasons stated herein and in the supporting memorandum, Sidley's counsel should be required to withdraw from its representation of White.

8. In the alternative, if the Court determines that disqualification is not appropriate, the EEOC respectfully requests that Sidley's counsel be directed to file, by a date certain, a declaration that counsel has explained "the implications of the common representation and the advantages and risks involved" to Sidley, White, members of Sidley's Management and Executive Committees, and any other persons Sidley's counsel represents in connection with this action, as required by Local Rule 83.51.7(c).

June 5, 2006

Respectfully Submitted,

s/ Justin Mulaire
John C. Hendrickson, Regional Attorney
Gregory Gochanour, Supervisory Trial Attorney
Deborah Hamilton
Laurie Elkin
Justin Mulaire, Trial Attorneys
U.S. Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
312-353-7722