

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

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

**NOTICE OF EEOC’S AGREEMENT TO DISMISS AS MOOT AND WITHOUT
PREJUDICE EEOC’S MOTION TO COMPEL DEPONENT WILLIAM WHITE TO
ANSWER QUESTIONS REGARDING HIS CONVERSATIONS WITH SIDLEY
MANAGEMENT AND FOR COMPLETION OF HIS DEPOSITION**

1. On September 5, 2006, EEOC filed a Motion to Compel Deponent William White to Answer Questions Regarding his Conversations with Sidley Management and For Completion of His Deposition.
2. EEOC filed that motion after White testified during his July 26, 2006 deposition that he talked to Sidley partners Ted Miller and Bill Conlon about a letter he drafted to the Social Security Administration stating that Sidley maintained an age-based retirement policy. During his deposition, acting on the instructions of his attorney and Sidley’s counsel, White refused to answer questions about the content of those conversations and left his deposition before EEOC had completed questioning him.

3. White is not represented by counsel for Sidley. During his deposition, White's counsel stated – repeatedly – that he would not answer EEOC's questions about the content of those conversations without an Order from this Court.
4. Counsel for the law firm of Sidley & Austin, who was present at the deposition and who had objected to White answering questions about his conversations with the two Sidley partners on the basis that those conversations were protected from disclosure by the attorney-client or work product privileges, filed a response to EEOC's motion compel late in the day on Friday, September 15, 2006. In that response, Sidley now takes the position that (contrary to their position at the deposition) the conversation between White and Miller is not privileged and states that it will waive the privilege with regard to the conversation between White and Conlon provided that EEOC will "agree that Mr. White's testimony does not waive Sidley's privilege with regard to any other communication." Sidley also stated that it had no objection to continuing White's deposition for another hour.
5. Although EEOC does not agree with Sidley's position that the attorney-client privilege covers Conlon's conversation with White, EEOC will agree that it will not use White's testimony as a basis for finding that Sidley has waived the privilege with regard to other communications that are protected by the attorney-client privilege so long as White's testimony itself does not rely upon or refer to such privileged communications.
6. Sidley's response filed on Friday, September 15, 2006 made no mention of any agreement with White's counsel on either of these points. Nor did White's

counsel ever participate in any “meet and confer” between the EEOC and Sidley on any other issue. Sidley’s suggestion in its brief that the EEOC somehow failed to comply with the “meet and confer” obligations of the local rules because the White issues were not discussed during a “meet and confer” in which White’s counsel did not participate simply ignores the fact that White had counsel separate from counsel for Sidley and that White’s counsel repeatedly stated at White’s deposition that the EEOC’s questions would not be answered without an Order from this Court.

7. On Monday, September 18, 2006, counsel for William White, attorney Michael Hannafan, called the EEOC and stated that he would produce White for an hour and a half for the continuation of his deposition and that he would agree to have White answer questions about his conversations with Sidley partners Miller and Conlon if the EEOC reached agreement with Sidley.
8. Accordingly, EEOC agrees to dismiss as moot and without prejudice its Motion to Compel Deponent William White to Answer Questions Regarding his Conversations with Sidley Management and For Completion of His Deposition.

WHEREFORE, in reliance upon the representations by counsel for Sidley and counsel for White, EEOC requests that this Court dismiss as moot and without prejudice EEOC’s Motion to Compel Deponent William White to Answer Questions Regarding his Conversations with Sidley Management and For Completion of His Deposition.

September 18, 2006

s/ Deborah Hamilton
By: _____
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CERTIFICATE OF SERVICE

Deborah Hamilton, an attorney, hereby certifies that on Sept. 18, 2006, she caused copies of the foregoing document, to be served electronically, via the court's Electronic Case Filing system, upon counsel to defendant Sidley Austin Brown & Wood, L.L.P. at the e-mail address below and upon counsel for the witness White via fax.

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