

United States District Court, Northern District of Illinois

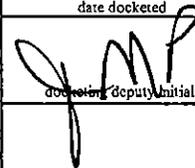
Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge if Other than Assigned Judge	Morton Denlow
CASE NUMBER	01 C 4427	DATE	11/3/2004
CASE TITLE	EEOC vs. International Profit Associated, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Part D of IPA's emergency motion for sanctions [294-1] is granted and B.D. will be required to answer these questions in writing as an addendum to her deposition without the necessity for a second deposition. No monetary sanctions will be awarded.
- (11) [For further detail see order on the reverse side of the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input checked="" type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials DK	U.S. DISTRICT COURT NOV 04 2004 2004 NOV -3 PM 4:01	number of notices	Document Number 312
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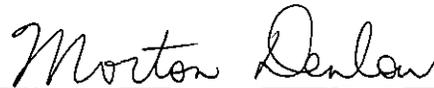
(Reserved for use by the Court)

ORDER

Defendant, International Profit Associates, Inc. ("IPA") filed a multi-part emergency motion for sanctions. This order addresses only subsection D of the motion, which claims that the EEOC improperly instructed its client not to answer questions concerning whether she was instructed by counsel to search for and produce documents relevant to this case. In particular, the EEOC asserted the attorney-client privilege and instructed its client, B.D., not to answer the following questions: 1) Did the EEOC ever ask you to look for any documents prior to your deposition? and 2) Were you ever asked by anybody to look for documents?

The instruction not to answer was improper because in the Seventh Circuit questions dealing only with the search of files do not reveal legal advice and are therefore not privileged. *In re Grand Jury Proceeding* (Barton), 68 F.3d 193, 196 (7th Cir. 1995); *In the Matter of Michael Feldberg*, 862 F.2d 622, 627 (7th Cir. 1988). The questions at issue are similar to those involved in the *Barton* case, which included: Whom did you direct [to perform the document search]?; and from whom did you get [the documents]? *Barton* at 194-95. The Seventh Circuit stated that Questions 1 and 2 dealt only with whether the attorney directed his client to search for files. Therefore, the communications did not reveal a client confidence or legal advice and thus were not protected by the attorney-client privilege. *Id.*

The questions to B.D. are similar to Questions 1 and 2 asked in *Barton*. Even though an attorney was the subject of grand jury questioning in *Barton* while a client was the subject of questioning at the deposition in the case at bar, the dispositive issue remains the same; whether the questions presented are precluded by the attorney-client privilege. The only difference between the questions asked in *Barton* and in the case at hand is semantic. Both sets of questions were attempting solely to discover whether the client's attorney asked the client to search for documents. The Seventh Circuit decisions in both *In re Matter Grand Jury* and *Feldberg* conclude that answers to questions dealing only with the search of files do not reveal legal advice rendered by the attorney, and thus are not precluded by the attorney-client privilege. Therefore, the questions asked by counsel of IPA in the case at bar, "Did the EEOC ever ask you to look for any documents prior to your deposition?" and "Were you ever asked by anybody to look for documents?" are not barred by the attorney-client privilege. **Accordingly, part D of IPA's emergency motion for sanctions is granted and B.D. will be required to answer these questions in writing as an addendum to her deposition without the necessity for a second deposition. No monetary sanctions will be awarded.**



MORTON DENLOW

United States Magistrate Judge

Dated: November 3, 2004