

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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AUSTIN DIVISION

2003 JAN -8 PM 4:25

WESTERN DISTRICT OF TEXAS
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BY: SV
DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

-vs-

Case No. A-02-CA-341-SS

COX COMMUNICATIONS,

Defendant.

ORDER

BE IT REMEMBERED on the 6th day of January 2003 the Court called the above-styled cause for hearing, and the parties appeared through counsel of record. The Court confirms its oral announcements at the hearing with the following written orders.

The plaintiff, the Equal Employment Opportunity Commission ("EEOC") moves to quash the Defendant Cox Communications, Inc.'s ("Cox") 30(b)(6) deposition notice. On November 18, 2002, Cox served its 30(b)(6) deposition notice on the EEOC. Cox designated matters for testimony at the deposition including the allegations and assertions of discrimination in the EEOC's complaint; the training the EEOC required or suggested employers provide to their employees regarding discrimination from January 1, 1998 to the present; the EEOC's policies during this time period regarding processing and investigating charges of discrimination and the standards for bringing lawsuits and class-based actions against certain employers; and the intake, processing and investigation of the charges filed by plaintiff-intervenor Cesar Mejias and other individuals. See Motion to Quash, Ex. 1.

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The EEOC objects to the notice because (1) it seeks information privileged under the deliberative process privilege, attorney-client privilege and attorney work product privilege; (2) the information it seeks would be unreasonably cumulative and duplicative; and (3) the EEOC's manner of investigation is not a relevant issue in this case. According to the EEOC, the only individuals with knowledge of the matters in the notice are the EEOC investigator assigned to the case and EEOC attorneys and support staff. These parties' evaluations of Cox employees' charges of discrimination in deciding whether to file suit are privileged. While the facts providing the basis for the EEOC's complaint are discoverable, the EEOC has produced its investigative file (aside from the privileged documents, which it will submit to this Court for *in camera* review) containing the witness statements giving rise to this cause of action. The investigator's deposition testimony as to the facts contained in those witness statements would be not only duplicative and cumulative, but hearsay. The proper method for inquiring as to the factual basis of the EEOC's claims is through interrogatories and requests for production, not a 30(b)(6) deposition of an investigator who has no personal knowledge of the alleged discrimination at issue.¹ If the EEOC refuses to provide Cox with the factual materials it requests, Cox can file a motion to compel.

Cox's deposition notice also raises topics that are irrelevant to any ultimate issue in this discrimination case. The issues of whether the EEOC satisfied statutory or regulatory procedural requirements and followed its own investigative policies will not be included in the jury instructions on Cox's substantive liability for discrimination. If Cox believes something improper occurred in

¹ Cox's counsel indicated at the hearing he wanted to depose the EEOC investigator to clear up any confusion he had in reading the investigative file. If Cox has specific questions about the file, it could seek clarification from the EEOC. Such clarification, however, should not be in the form of a 30(b)(6) deposition of the investigator or any other EEOC representative.

the EEOC's investigation, it may bring its concerns to the Court. A 30(b)(6) deposition is not the proper place for Cox to conduct an inquiry of any such suspicions.

In accordance with the foregoing:

IT IS ORDERED that the Plaintiff's Motion to Quash Defendant's 30(b)(6) Deposition Notice [#17] is GRANTED;

IT IS FURTHER ORDERED that the Plaintiff's Unopposed Motion to Supplement Plaintiff EEOC's Motion to Quash [#18] is GRANTED;

IT IS FINALLY ORDERED that the Plaintiff SHALL FILE with the Court for *in camera* review by **January 21, 2003** the portions of the EEOC investigative file it withheld from production to the Defendant as privileged, along with an explanation of how the privilege protected the specific documents withheld.

SIGNED this the 7th day of January 2003.



SAM SPARKS
UNITED STATES DISTRICT JUDGE