

EEOC Cannot Claim “Deliberative Process Privilege” To Preclude Investigator’s Deposition

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The United States District Court of the Southern Division of Alabama recently denied the Equal Employment Opportunity Commission’s (EEOC) motion to quash the deposition of the investigator assigned to the underlying Charge of Discrimination.

In *Equal Employment Opportunity Commission v. Southern Haulers, Inc.*, the EEOC argued that the “deliberative process privilege” prohibited the defendant from deposing the investigator about “the steps she took in conducting the investigation, the documents produced by EEOC as part of its investigative file, inconsistencies in the documents contained in EEOC’s investigative file, and the individuals identified through the course of EEOC’s investigation.” According to the EEOC, the “deliberative process privilege” protects the disclosure of the investigator’s recommendations or suggestions to the District Director, who is the only person with authority to make and issue and Determination on a Charge of Discrimination.

The District Court disagreed. In its 2-page opinion, which can be found [here](#), the Court outlined several decisions in which courts in other jurisdictions similarly held that the “deliberative process privilege” does not shield the EEOC from having an investigator deposed regarding the “factual information contained in the EEOC’s investigative file” or from a Rule 30(b)(6) deposition. As a result, the District Court denied the EEOC’s motion and ruled that it must produce the investigator for her deposition.

The *Southern Haulers* decision provides a sound litigation strategy for employers when defending litigation claims by the EEOC. So long as the information sought in a deposition of the EEOC investigator is limited to what is typically sought in a Rule 30(b)(6) deposition such as the manner in which the investigation was conducted, the information gathered and any inconsistencies therein, employers likely will be successful in proceeding with such a deposition.

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