

Kelly Drye Settles EEOC Age Bias Suit

By Hope Eastman

A long simmering age discrimination battle between the EEOC and Kelly Drye, a law firm with more than 300 lawyers and 130 partners, has been resolved by a consent decree awarding more than \$500,000 in damages to an 81-year old partner. This settlement follows the EEOC's \$27.5 million settlement with Sidley Austin LLP in 2008.

In statements released in connection with the Kelly Drye settlement, the EEOC has made a clear threat that it is not through with this issue. According to Jeffrey Burstein, a senior trial lawyer with the EEOC's New York office who handled the case, "We certainly hope this sends a message that EEOC is looking at this issue and is concerned about mandatory retirement policies." Burstein said the agency would certainly consider bringing cases against other law firms, with or without a complaint from a partner being filed first.

At issue in the case were several policies affecting partners turning 70. After suit was filed in January 2010, Kelly Drye agreed to eliminate the provisions in its Partnership Agreement that required that a partner relinquish his/her equity interest in the firm after reaching age 70.

In the consent decree, Kelly Drye has agreed to an injunction barring these additional policies:

- Involuntary termination, expulsion, retirement, reduction of compensation of, or other adverse changes to, an individual's status at the firm being involuntarily reduced based on their age;
- Maintaining any formal or informal compensation policy or practice that provides for compensation for attorneys at the firm being involuntarily reduced based on age;
- Requiring involuntary retirement of a partner or relinquishment of an attorney's partnership status as a condition of continued employment once a partner has reached a certain age; and
- Requiring attorneys to involuntarily cease their service on any committee of the firm or on any practice group of the firm because of age.

The consent decree does not address the question of whether law firm partners are "partners/owners" or "employees" so no new light is shed on that analysis. At the same time, however, the EEOC had to be taking the position that partners were employees because, without such an assumption, the EEOC would have no jurisdiction.

Large firms need to be particularly aware of this issue, but smaller firms do so as well. All firms need to review their Partnership or Shareholder Agreements to be sure that all partners play a significant role in managing their firms.