

## THE MILES LAW FIRM, LLC

600 COLUMBIA AVENUE, SUITE 7

LEXINGTON, SC 29072

803-951-2230

803-951-2328 (FAX)

Admitted in SC & NC

November 25, 2009

Joseph H. Hunt  
Director  
Federal Programs Branch  
U.S. Department of Justice  
Washington, D.C. 20530  
Fax: (202) 616-0222

Dear Sirs:

I am in receipt of your communication to Civil Rights Commission Chairman Glen Reynolds of November 24, 2009.

While I understand the Department's position, my client may have a statutory obligation to appear and testify independent of and superior to the limits of 28 C.F.R. 16.22(a). I would refer you, for example, to 42 U.S.C 1975b(e) which mandates that all federal agencies, and by implication their employees, cooperate with investigations by the Civil Rights Commission. Failing to comply could subject my client to imprisonment for contempt.

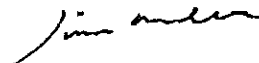
The Commission also served 18 U.S.C. 1505 to my client as part of the subpoena. It states that anyone who corruptly or threateningly "influences, obstructs, or impedes" the due and proper exercise of the Commission's subpoena process is subject to fine and five-year imprisonment. Given that the actions of the Department appear to be one subject of the investigation, the order places my client in a particularly difficult position.

I would also note the subpoena and investigative powers of the Commission are expansive. Hannah v. Larche, 383 U.S. 420 (1960). Moreover, parties who are the topic of the investigation have a limited ability to assert a privilege in a Commission investigation. U.S. v. O'Neill 619 F.2d 222 (3rd Cir. 1980). Are you requesting that my client put himself in jeopardy of being imprisoned for not complying with a subpoena?

I have already requested from Chairman Reynolds that my client's deposition be rescheduled to accommodate a conflict with the deposition of Christopher Coates. Your request to delay the deposition due to the Thanksgiving Holiday is also a reasonable basis to delay my client's deposition.

In the meantime, I welcome a discussion with you about reaching an accommodation which respects my client's obligation to comply with an active subpoena pursuant to 42 U.S.C. 1975a(e)(2) to testify about matters of significant public importance. I respectfully suggest that a command to ignore this subpoena appears, at a minimum, to disregard entirely the interests of my client and appears designed solely to assert a prerogative of the Department. Of course the Department is wholly within its power to assert this prerogative. But this assertion forces my client to choose between his obligations under 42 U.S.C. 1975(e) and 42 U.S.C. 1975b(e), and his lesser obligation under a federal regulation. The potential sanctions for failing to comply with the statutory obligations are plainly more serious than violating the federal regulation you cite. I would therefore invite a discussion that considers the interests and obligations of my client with an aim toward reaching a satisfactory accommodation for the Commission, the Department and my client. Specifically, I am requesting an answer to my question, and that is, are you requesting that my client subject himself to imprisonment pursuant to the above-cited statute? Please feel free to call me at (864) 344-6892.

Sincerely,



Jim Miles

C.C. Glen Reynolds (202) 376-1163  
Arthur Goldberg (202) 616-8470  
David P. Blackwood (202) 376-1163