

**U.S. Department of Labor**

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**Issue Date: 14 April 2017**

CASE NO. 2017-OFC-00004

*In the Matter of*

**OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS,  
U.S. DEPARTMENT OF LABOR,**  
Plaintiff,

v.

**GOOGLE INC.,**  
Defendant.

**CORRECTED ORDER STRIKING SOLICITOR'S LETTER OF APRIL 12, 2017**

This matter came on for hearing on April 7, 2017. During the afternoon court session, Google reported to the administrative law judge (in the presence of OFCCP's counsel) that an article had just been published to the internet in which the Regional Solicitor of Labor was quoted commenting on the merits of the case while her subordinate attorneys were trying it in the courtroom upstairs from her office. Google construed the content of the Regional Solicitor's comments in a manner that brought into question OFCCP's good faith in pursuing the relief it seeks in the present litigation.

I adjourned the hearing. I set a briefing schedule for any motion Google might choose to file. Google's motion and brief were due **on or before April 14, 2017; OFCCP's opposition was due on or before April 21, 2017.**<sup>1</sup> I ordered the parties to file all motion-related papers under seal. I did this to protect confidential business and personnel records of Google that might become involved as well as to protect the reputation of the Regional Solicitor. My intent was to review the submitted papers *in camera* to determine whether they could be unsealed consistent with controlling law.

Without waiting to see if Google would even file a motion, not to mention what Google would argue, on April 12, 2017, OFCCP's counsel purported to file what appears to be a motion and brief in letter form. The letter brief was not submitted under seal. In it, attorney Eliasoph argues

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<sup>1</sup> On the morning on April 14, 2017, I extended each party's filing deadline by four calendar days to Tuesday, April 18, 2017, and Tuesday, April 25, 2017, respectively.

that the hearing should be resumed at the earliest possible date because Google's arguments – which Google was not even scheduled to file until two days later – were frivolous.

The purported motion was filed in derogation of my order at the hearing. In particular:

- OFCCP was to respond with a brief only if Google filed a motion. I expressly ordered that, if Google decided not to file a motion, it should notify the administrative law judge and OFCCP immediately. I did not issue an order to show cause, and without a motion, neither party was required to address the issue further.
- Both parties were to file their papers under seal. It is not for counsel for OFCCP to disregard an order that briefs be filed under seal.

An attorney's signature on a motion certifies that the motion is not being presented for an improper purpose, such as to harass another party. 29 C.F.R. § 18.35(b)(1). Filing this motion unsealed under all of the circumstances presented here comes close to raising questions about the propriety of counsel's purpose.

I acknowledge that counsel have a duty to represent clients zealously. But I have no doubt that counsel in this case are aware that they have ethical obligations that cabin the extent of zealotry.

Mr. Eliasoph's letter of April 12, 2017 (described above) is STRICKEN and will be returned to him. It will not be considered. Future conduct inconsistent with orders of the administrative law judge might lead to the imposition of sanctions. The sanctions potentially could include, in an appropriate instance and after an opportunity to be heard, a dismissal of the action or sanctions under 29 C.F.R. § 18.35(c)(4).

SO ORDERED.

STEVEN B. BERLIN  
Administrative Law Judge