



SDNY Denies Motion for Recusal or Disqualification of Judge Peck in *Da Silva Moore*

November 15, 2012

***Da Silva Moore v. Publicis Groupe SA*, No. 11 Civ. 1279 (S.D.N.Y. Nov. 8, 2012).**

It has been over six months since we last discussed the Plaintiff's request to have Judge Peck recuse himself after his decision to have the parties use predictive coding in *Da Silva Moore v. Publicis Groupe*. On November 8, 2012, United States District Judge Andrew Carter, Jr. for the Southern District of New York finally issued his decision.^[1]

After discussing the Second Circuit's legal standards for recusal and judge disqualification^[2], the Court focused on the fact that Magistrate Judge Peck is considered "one of [the Second Circuit's] experts in e-discovery" and his decision to have the parties adopt a protocol for e-discovery including the use of predictive coding was not motivated by bias.^[3] More specifically,

Here, it is undisputed that the parties agreed to defendants' use of predictive coding and only disagreed on the scope and implementation. Predictive coding does not inherently favor one party over the other in this case. Judge Peck's decision accepting computer-assisted review, reached upon consideration of the applicable law, was not influenced by bias, nor did it create any appearance of bias.^[4]

Therefore, the Court ruled that Magistrate Judge Peck's "conduct falls within the proper bounds of judicial conduct" and "[h]is denial of Plaintiffs' recusal motion is consistent with the interests of judicial economy and the administration of justice."^[5]

If you or your company has any questions or concerns regarding litigation holds, spoliation, or any other e-discovery related questions, please e-mail Arturo Castro at acastro@cullenanddykman.com.

A special thanks to Sean R. Gajewski, a law clerk at Cullen and Dykman, for help with this post.

1. ^[1] *Da Silva Moore v. Publicis Groupe SA*, No. 11 Civ. 1279 (S.D.N.Y. Nov. 8, 2012).
2. ^[2] In summary, the relevant inquiry as to whether a judge should disqualify/recuse himself from a case is if "an objective, disinterested observer fully informed of the underlying facts, entertain[s] significant doubt that justice would be done absent recusal."
3. ^[3] *Da Silva Moore* at *3.
4. ^[4] *Id.* at *3.
5. ^[5] *Id.* at *4.