

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON**

C. MARTIN GASKELL,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 09-244-KSF
vs.	)	
	)	
UNIVERSITY OF KENTUCKY,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF’S MOTION IN LIMINE**

Pursuant to this Court’s Amended Scheduling Order of May 17, 2010 [DE #17], Plaintiff, C. Martin Gaskell, by counsel, hereby moves this Court for an Order barring any argument by the Defendant at the trial of this matter that the number of job applications Plaintiff has filed, or the duration and outcome of his attempts to secure employment from 2007 until present is relevant in any way to the issue of Plaintiff’s qualifications for the job of Observatory Director at the University of Kentucky.

In support hereof, Plaintiff relies on the accompanying Memorandum of Law.

**MEMORANDUM OF LAW**

**A. Statement of Facts**

In its Response to Plaintiff’s Motion for Partial Summary Judgment, the Defendant made an argument that Plaintiff Martin Gaskell was somehow less than qualified for the post of Observatory Director based on the number of job applications he sent out following the lapse of his grant-funded position at the University of Nebraska. The Defendant further argued that Gaskell’s failure to secure certain specific positions he applied for showed his lack of

qualifications for the UK job. Defendant's Response to Motion for Partial Summary Judgment, [DE #44 at 1-3].

Defendant should be prohibited from raising this legally inappropriate argument — an argument completely undermined by the University's own agents — at the upcoming trial of this matter.

**B. Argument**

Fed. R. Evid. 402 deems inadmissible evidence which is not relevant. Rule 403 excludes evidence whose probative value is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” UK's argument that Gaskell's success or failure in his job search is somehow relevant on the issue of his qualifications for the UK job should be barred under either or both rules.

To begin with, as a factual matter, Gaskell's basic qualifications for the Observatory Director job were, until UK filed its Response to Plaintiff's Motion, *absolutely undisputed*. Indeed, as the Court noted in its Summary Judgment Order, “[T]here is no dispute that based on his application, Gaskell was a leading candidate for the position.” [DE #47 at 5.] The Court quoted two of the key hiring process participants to this effect. *Id.* (Cavagnero: “Gaskell is clearly the most experienced;” Troland: Gaskell “has already done everything we could possibly want the observatory director to do.”)

But aside from the factual baselessness of this late-discovered argument, it cannot stand legally either. This case is about, *inter alia*, whether Gaskell was qualified for the UK job, not any other job. UK proffers nothing beyond the mere number of other applications he made and the length of time it took him to secure employment as a basis for its argument. We know

nothing about what the requirements of the other jobs were, what were the reasons that Gaskell did not obtain any given job, or whether the number of applications he sent out is an unusually high one for someone in his profession, with his experience, salary requirements, etc. Even if this job search information were somehow relevant, its probative value would be substantially outweighed by, *inter alia*, the necessity of conducting several dozen mini-trials to determine what Gaskell was applying for, what the requirements were, and why he did not get each particular position.

As it is, however, there is simply no probative value whatsoever to this information on the issue of Gaskell's qualifications for the job of Observatory Director at UK. As such, the Defendant should be barred from attempting to renew this argument at trial, directly or indirectly.

Respectfully submitted,

/s/ Francis J. Manion

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2010, I electronically filed the foregoing Plaintiff's Motion in Limine, with the Clerk of Court using the CM/ECF filing system, which will send notification of such filing to the following:

Barbara A. Kriz  
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/s/ Francis J. Manion

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**ORDER**

Upon the Motion in Limine of the Plaintiff for an order barring any argument by Defendant that the number of job applications Plaintiff has filed, or the duration and outcome of his attempts to secure employment from 2007 until present is relevant in any way to the issue of Plaintiff's qualifications for the job of Observatory Director at the University of Kentucky; the Court having reviewed the Motion with the supporting Memorandum of Law; and being otherwise sufficiently advised, it is hereby ORDERED that Plaintiff's Motion in Limine be and the same is hereby GRANTED.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
HON. KARL S. FORESTER, JUDGE  
UNITED STATES DISTRICT COURT