

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION
CIVIL ACTION CASE NO. 5:09-cv-00244-KSF

filed electronically

C. MARTIN GASKELL

PLAINTIFF

V.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION IN LIMINE**

UNIVERSITY OF KENTUCKY

DEFENDANT

** ** * ** * ** * ** * ** *

Comes the Defendant, University of Kentucky, by counsel, and for its Response to the Plaintiff's Motion in Limine, states as follows:

Plaintiff asks the Court to bar the Defendant from arguing that the number of job applications he has filed, or the duration and outcome of his attempts to secure employment from 2007 to the present is relevant to his qualifications for the job as Observatory Director at the University of Kentucky. The Defendant does not dispute that Gaskell had the basic qualifications for the Observatory Director position. Had he not had those basic qualifications, he would never have been asked to attend first a phone interview and then an on-campus interview for the position. However, Gaskell will be asking the jury to award him damages for wages he claims he would have earned had he been hired for the position at the University of Kentucky. The evidence will demonstrate that Gaskell was without a job prior to the date that the University posted its job opening for Observatory Director. In discovery, Gaskell revealed that from the point he learned he did not have a continuing job at the University of Nebraska , he has applied for some 59 to 60 different jobs. He has never been invited for any interviews nor has he ever been offered a position with any of the employers with whom he filed those job applications. Many of the jobs that he applied for were with institutions of higher learning

similar to the University of Kentucky. Additionally, Gaskell applied for several positions with observatories. The Defendant should be able to present this information to the jury on the issue of whether Gaskell's qualifications were so superior to all others that he was the only obvious choice for the Observatory Director. Evidence that he had applied for similar positions at other schools and observatories and yet was not invited for an interview is evidence of probative value on Gaskell's claim that he would have been chosen for the position of Observatory Director at the University of Kentucky had his "religion" not been considered by the Advisory Committee members. The evidence will show that the University of Kentucky was one of 60 employers with whom Gaskell sought employment but who rejected his application for employment.

Additionally, the evidence regarding Gaskell's failed job search is relevant to the issue of damages. He intends to ask the jury to award him wages he claims he would have earned had he been hired by the University up through his retirement age, and the University of Kentucky should be permitted to show the jury that he suffered the same lost wages by virtue of his rejection by other employers.

At his deposition, Gaskell testified that he had no knowledge about why he was rejected by the other employers with whom he filed applications. In this case, he had no personal knowledge about why his application was rejected by the majority of the Advisory Committee members except for comments allegedly made to him by Gary Ferland, who was not even in the country during the Advisory Committee's search and who testified that he had no recollection of any such comments. According to Gaskell, Ferland allegedly told him that his application for employment was rejected on the basis of the biologists' objections to his employment. The Defendant should be able to demonstrate to the jury that the University of Kentucky treated Gaskell no differently than any other institution with whom he applied for employment. Therefore, the Plaintiff's Motion in Limine to preclude the Defendant from introducing evidence regarding Gaskell's failed job search should be overruled.

Respectfully submitted,

BAKER, KRIZ, JENKINS, PREWITT & JONES, PSC
PNC Bank Plaza, Suite 710
200 West Vine Street
Lexington, Kentucky 40507-1620
Telephone: (859) 255-6885, Ext. 114
Facsimile: (859) 253-9709
E-Mail: bkriz@bakerkriz.com

s/BARBARA A. KRIZ
Counsel for Defendant, University of Kentucky

CERTIFICATE OF SERVICE

I hereby certify that on **December 22, 2010**, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Francis J. Manion, Geoffrey R. Surtees and Edward L. White, III.

s/Barbara A. Kriz
Baker, Kriz, Jenkins, Prewitt & Jones, P.S.C.
200 West Vine Street, Suite 710
Lexington, Kentucky 40507-1620
Telephone: (859) 255-6885, Ext. 114
Facsimile: 859-253-9709
E-mail: bkriz@bakerkriz.com
Counsel for Defendant

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PROPOSED ORDER

UNIVERSITY OF KENTUCKY

DEFENDANT

** ** * ** * ** * ** * ** *

On Motion of the Plaintiff to prohibit Defendant from introducing evidence regarding the number of job applications Plaintiff has filed or the duration and outcome of his attempts to secure employment from 2007 to the present at trial, the Court having reviewed the Response of the Defendant, having heard argument and being otherwise sufficiently advised, it is hereby ORDERED that the Plaintiff's Motion is OVERRULED.

ENTERED this _____ day of _____, 2010.

HON. KARL S. FORESTER, JUDGE
UNITED STATES DISTRICT COURT
LEXINGTON DIVISION