

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 UNIVERSITY OF KENTUCKY'S
PROPOSED JURY INSTRUCTIONS**

UNIVERSITY OF KENTUCKY

DEFENDANT

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

Comes the Defendant, University of Kentucky, by counsel, and hereby submits its Proposed Jury Instructions.

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 **January 6, 2011**, 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
Attorney for Defendant
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 Defendants

JURY INSTRUCTION NO. 1

Plaintiff, Martin Gaskell, brings this action against the Defendant, University of Kentucky, under Title VII of the Civil Rights Act of 1964, which makes it an unlawful practice for an employer not to hire an individual because of such individual's religion. Gaskell alleges that the University of Kentucky failed to hire him because of his religion.

JURY INSTRUCTION NO. 2

The Plaintiff, Martin Gaskell, must prove by a preponderance of the evidence that his religion was a motivating factor in Defendant University of Kentucky's decision not to hire him as Observatory Director. A motivating factor is something that contributed to the Defendant's decision.

If you find that Plaintiff Martin Gaskell has proved that his religion contributed to Defendant University of Kentucky's decision not to hire him for Observatory Director, you must then decide whether Defendant University of Kentucky, proved by a preponderance of the evidence that it would not have hired him even if it had not considered his religion. If so, the Plaintiff, Martin Gaskell, is not entitled to an award of damages.

INTERROGATORY NO. 1-1: Do you believe that the Plaintiff, Martin Gaskell, has proved by a preponderance of the evidence that his religion was a motivating factor in Defendant University of Kentucky's decision not to hire him?

_____ YES _____ NO

If you have answered "No" to this Interrogatory, please return to the courtroom. If you have answered "Yes" to this Interrogatory, please proceed to the next Interrogatory.

INTERROGATORY NO. 1-2: If you find that Plaintiff Martin Gaskell has proved that his religion contributed to Defendant University of Kentucky's decision not to hire him as Observatory Director, do you believe that the Defendant University of Kentucky has proved by a preponderance of the evidence that it would not have hired him even if it had not considered his religion?

_____ YES _____ NO

If you have answered "Yes" to Interrogatory No. 1-2, please return to the courtroom. If you have answered "No" to this Interrogatory, please proceed to the Damages Instruction.

JURY INSTRUCTION NO. 3

If you have answered “Yes” to Interrogatory Nos. 1-1 and “No” to Interrogatory 1-2, you must now determine from the evidence the amount of damages, if any, which you believe from the evidence Plaintiff Martin Gaskell has sustained directly because of the actions of the Defendant.

What is the amount of damage, if any, sustained by Martin Gaskell for the following items:

- 1. The wages and benefits Gaskell would have earned in his employment with the University of Kentucky from the date he would have been hired by the University up through the date of your verdict, minus the amount of earnings and benefits that Gaskell received from other employment during that time.

(Not to exceed the sum of \$ _____) \$ _____

- 2. Future wages and benefits Gaskell would reasonably have earned in his employment with the University of Kentucky from the date of your verdict through the date Gaskell would have retired, minus the amount of earnings and benefits that Gaskell will receive from other employment during that time.

(Not to exceed the sum of \$ _____) \$ _____

- 3. Emotional distress and anguish.

(Not to exceed the sum of \$ _____) \$ _____

TOTAL \$ _____

JURY INSTRUCTION NO. 4

Gaskell has a duty under the law to mitigate his damages; that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if you find by a preponderance of the evidence that Gaskell failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out and taken advantage of such opportunity.

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture, and you must not award damages under this Instruction by way of punishment or through sympathy.

Source of Instructions:

Model Federal Jury Instructions – Civil, 7th Circuit at §4.02

Model Federal Jury Instructions – Civil, 8th Circuit at §5.02

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 Ct. 2097 147 L. Ed. 2d 105 (2000).