

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BARBARA ANN WILSON,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BIRMINGHAM, et al.,)
)
 Defendants.)

CIVIL ACTION NO.
CV-10-KOB-2386

**MOTION TO DISMISS BY DEFENDANT IRENE S. BLALOCK WITH
SUPPORTING AFFIDAVIT**

The individual Defendant, Irene S. Blalock (“Blalock”), in the above styled case, by and through her attorneys of record, pursuant to Rule 12 of the Federal Rules of Civil Procedure, and in response to the Amended Complaint, moves the Honorable Court to enter an Order dismissing her with prejudice as a Defendant from the above styled case. In support of said motion, the Defendant states as follows:

1. The Complaint fails to state a claim against this Defendant upon which relief may be granted.
2. Plaintiff’s Complaint solely alleges a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991. (*Doc. 1, Page 3*).
3. **Defendant Blalock is not an “employer” under Title VII of the Civil Rights**

Act of 1964 § 2000E.

Blalock is not included under the definition of an “employer” under Title VII of the Civil Rights Act of 1964, § 2000e, Section (b). The term “employer” is defined in § 2000e, Section (b) as follows:

The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 [of the United States Code]), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26 [the Internal Revenue Code of 1954], except that during the first year after March 24, 1972 [the date of enactment of the Equal Employment Opportunity Act of 1972], persons having fewer than twenty five employees (and their agents) shall not be considered employers.

Clearly under the definition, Blalock cannot be construed as an employer. The management and control of the Birmingham Public Library, its branches, its employees, property and all other library interest is vested in the Birmingham Library Board. The Birmingham Library Board, in turn, hires an Executive Director to handle day to day activities. Birmingham City Code Section 2-5-71, et. al. (*Exh. 1 Affidavit*). Blalock is not the employer of the Plaintiff, Barbara Wilson. Blalock is the supervisor of the Plaintiff, Barbara Wilson, for purposes of Title VII. Blalock and Wilson are both employed by the Birmingham Library

Board. As such, the Title VII claim filed by Plaintiff against Blalock is due to be dismissed. (*Exh. 1 Affidavit*)

4. **Plaintiff is not an “employee” of Blalock under Title VII of the Civil Rights Act of 1964 § 2000e.**

Since Blalock is not covered as an “employer” under § 2000e, Section (b), the plaintiff is not an “employee” of Blalock under § 2000e, Section (f). Section (f) defines “employee” as follows:

The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

Blalock is not the employer of the Plaintiff. Blalock is the supervisor of the Plaintiff. Since Blalock is not an “employer”, the Plaintiff cannot be considered her “employee”. Blalock is not an “employer” under § 2000e, Section (b) and Blalock is not the employer of the Plaintiff, Barbara Wilson. As such, the Title VII claim filed by Plaintiff against Blalock is due to be dismissed.

WHEREFORE PREMISES CONSIDERED, the Defendant, Irene S. Blalock, respectfully requests this Honorable Court pursuant to Rule 12(b) of the Federal Rules

of Civil Procedure to dismiss her with prejudice as a Defendant from the above styled case.

Respectfully submitted,

/s/Fredric L. Fullerton, II
Fredric L. Fullerton, II
Assistant City Attorney

/s/Nicole E. King
Nicole E. King
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NO ORAL ARGUMENT REQUESTED

The Defendant does not request oral argument on this motion however, if the Court grants such, the Defendant wishes to participate.

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2010 I electronically filed the foregoing with the Clerk of the Court using the e-filing system which will send notification of such filing to the following:

Adam P. Morel, Esq.,
517 Beacon Parkway West
Birmingham, AL. 35209

/s/Fredric L. Fullerton, II
Of Counsel