

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

BARBARA ANN WILSON,)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	CV-10-KOB-2386
CITY OF BIRMINGHAM, et al.,)	
Defendants.)	

ANSWER OF DEFENDANT CITY OF BIRMINGHAM

The Defendant, the City of Birmingham (“City”), Alabama, a municipal corporation existing under the laws of the State of Alabama, by and through its attorneys of record, in the above entitled cause and in Answer to the Complaint heretofore filed says as follows:

JURISDICTION

1. Defendant admits that Plaintiff purports to bring this action under the Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991, but denies that Plaintiff has stated a cause of action under those laws, and denies that Plaintiff is entitled to any relief based on those laws.
2. Defendant admits this Court has subject matter jurisdiction. Defendant admits venue is appropriate in this District.
3. Defendant admits the averments contained in paragraph 3, but Defendant denies that it engaged in unlawful practice and acts of discrimination.

PARTIES

4. Defendant is without sufficient knowledge or information to either admit or deny the averments of paragraph 4 and therefore it denies those allegations.
5. Defendant admits the averments contained in paragraph 5.
6. Defendant admits the averments contained in paragraph 6.

ADMINISTRATIVE REMEDIES

7. Defendant admits the averments contained in paragraph 7, but denies that Plaintiff has stated a cause of action under those laws, and denies that Plaintiff is entitled to any relief based on those laws.
8. Defendant is without sufficient knowledge or information to either admit or deny the averments of paragraph 8 and therefore it denies those allegations.
9. Defendant is without sufficient knowledge or information to either admit or deny the averments of paragraph 9 and therefore it denies those allegations.

FACTUAL ALLEGATIONS

10. Defendant, City of Birmingham, denies that it operates the downtown branch of the Birmingham Public Library.
11. Defendant, City of Birmingham, denies that the Plaintiff is its employee.
12. Defendant admits the averments contained in paragraph 12.
13. Defendant denies the averments contained in paragraph 13.
14. Defendant denies the averments contained in paragraph 14.
15. Defendant denies the averments contained in paragraph 15.
16. Defendant denies the averments contained in paragraph 16.

17. Defendant denies the averments contained in paragraph 17.
18. Defendant denies the averments contained in paragraph 18.
19. Defendant denies the averments contained in paragraph 19, Plaintiff has reported non-sexual related conduct and reputed sexual conduct.
20. Defendant denies the averments contained in paragraph 20.
21. Defendant denies the averments contained in paragraph 21.
22. Defendant denies the averments contained in paragraph 22.
23. Defendant denies the averments contained in paragraph 23.

COUNT I
TITLE VII –Sexual Harassment

24. Defendant denies the averments contained in paragraph 24.
25. Defendant denies the averments contained in paragraph 25.

AFFIRMATIVE DEFENSES OF DEFENDANT CITY OF BIRMINGHAM

1. The Complaint fails to state a claim against the City for which the plaintiff is entitled to relief.
2. The City denies each and every material allegation of the Complaint and demands strict proof thereof.
3. The City denies that the Plaintiff is its employee for purposes of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
4. The City pleads not guilty/liable to the general issue.
5. The City denies that the plaintiff was injured in the nature or to the extent claimed and contests damages.

6. The City denies that the plaintiff suffered damages as alleged in the Complaint and that if said damages were in fact sustained, they were caused by parties other than the City or its officers, agents or employees.
7. The defendant pleads not guilty/liable as to all material issues raised in the Complaint and contest all damages demanded by the plaintiff. The Defendant denies that the plaintiffs are due compensatory, actual or punitive damages, attorney's fees or costs of any type.
8. The City asserts the defense of immunity, whether qualified, absolute, discretionary, functional, governmental, good faith or substantive as a complete bar to this action.
9. The plaintiff failed to mitigate its damages, though damages are denied as being due.
10. The Defendant, City, would plead that the Plaintiff has violated the Birmingham Library policies. The Birmingham Library has an anti-sex discrimination/hostile work environment policy which is enforced and all employees are required to comply.
11. The defendant asserts that plaintiff's claims are time barred.
12. The claims of the Plaintiff are untrue and the Defendant is not guilty. The Plaintiff does not work in a sexually hostile environment.
13. The Defendant asserts the statute of limitations as to claims arising under 42 U.S.C 2000 which occurred prior to 180 days prior to filing the her EEOC charge.
14. The complaint fails to state a claim upon which relief may be granted under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
15. The Defendant denies that it violated any provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 and Civil Rights Act of 1991.
16. The Plaintiff cannot prove a hostile work environment as she cannot show: (1)

that he or she belongs to a protected group, (2) that the employee has been subject to unwelcome sexual harassment, such as sexual advances, requests for sexual favors, and other conduct of a sexual nature, (3) that the harassment must have been based on the sex of the employee, (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment, and (5) a basis for holding the employer liable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).

17. Plaintiff's "subjective perception" to the harassment as sufficiently severe and pervasive to alter the terms or conditions of employment is not objectively reasonable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).
18. Plaintiff's encounters to general vulgarity or references to sex that are indiscriminate in nature are not actionable. Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C.A. § 2000e-2(a)(1).
19. The City is immune from the imposition of punitive damages for an alleged violation of Constitutional rights. Punitive damages are barred against the City by the provisions of Code of Alabama §6-11-26, 1975, City of Newport v. Facts Concerts, 453 U.S. 247, 101 S. Ct. 2748 (1981).
20. The Defendant reserves the right to amend its Answer and raise additional defenses which become known through the discovery process.

Respectfully submitted,

/s/Fredric L. Fullerton, II

Fredric L. Fullerton, II
Assistant City Attorney

/s/Nicole E. King

Nicole E. King
Assistant City Attorney

City of Birmingham Law Department
600 City Hall, 710 North 20th Street
Birmingham, Alabama 35203
(205) 254-2369/(205) 254-2502 FAX

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2010 I electronically filed the foregoing with the Clerk of the Court using the e-filing system which will send notification to the following:

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

/s/Fredric L. Fullerton, II
Of Counsel