

**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.)	

DEFENDANTS' MOTION IN LIMINE

The Defendants, the City of Birmingham (“the City” or “Defendant”), a municipal corporation under the laws of the State of Alabama, and the Birmingham Library Board (“the Board” or “Defendant”), by and through their attorneys, pursuant to the Court’s Pretrial Order of February 29, 2012, hereby move the Court for entry of an order in limine, prohibiting the introduction by Plaintiff Barbara Wilson of certain testimony and evidence, and prohibiting any argument, mention, discussion or references to, or any other showing of any of the matters described below. The Defendants state that such testimony and evidence is not admissible and introduction of such evidence in the presence of the finder of fact, even if an objection was sustained and the finder of fact instructed not to consider it, could not be erased from the mind of the finder of fact. Therefore, the Defendants move the Court to instruct the Plaintiff’s

attorneys, prior to trial, and any and all witnesses called on behalf of any party, to refrain from giving any testimony, making direct or indirect reference to, or otherwise mentioning or introducing during the trial of this case in the presence of the finder of fact the following matters:

A. The wealth or poverty of the parties

The Defendants anticipates that the Plaintiff will attempt to offer evidence of the economic condition of the Plaintiff or one or more parties to this litigation. “There is a general exclusionary rule in Alabama precluding the admission of evidence as to the wealth or poverty of litigants when offered to aggravate or mitigate damages.” Bowers v. Wal-Mart Stores, Inc., 827 So. 2d 63, 72 (Ala. 2001) (internal quotation and citation omitted); *see generally* GAMBLE’S ALABAMA RULES OF EVIDENCE § 414, at 150 (2d ed. 2002) (“A civil litigant is precluded generally from making the jury privy to the litigant’s own poverty or an opponent’s wealth.”); Allison v. Acton-Etheridge Coal Co., 268 So. 2d 725 (Ala. 1972) (holding that defense counsel was prohibited from commenting that it is a great thing to be like the plaintiff and hire two law firms with four lawyers). Reference by any party regarding the wealth or economic condition of a litigant is improper and prejudicial. *See* Holt v. State Farm Mut. Auto. Ins. Co., 507 So. 2d 388 (Ala. 1986). The Court should, therefore, pursuant to AL. R. EVID. 401, 402, 403, preclude any evidence of any of the parties’ wealth, net worth, income,

profits, or any other similar information.

B. Punitive Damages.

Defendant anticipates that the Plaintiff will attempt to produce into evidence discussion of punitive damages against the Defendant. The discussion of punitive damages is prejudicial and outweighs its probative value. Further, punitive damages never recoverable against the City, a governmental entity under Alabama law. Code of Alabama §6-11-26, 1975. It would be *irrelevant and immaterial* to the issues in this case. ALA. R. EVID. 401, 402. The Birmingham Public Library is part of the Governmental entity. The Birmingham Library Board has no nor maintains independent assets. A discussion of punitive damages would serve only to confuse, mislead and prejudice the jury. The Court should, therefore, preclude all evidence or discussion of punitive damages.

C. Relationship between Edith Major and Mike Lee

Defendants anticipate that the Plaintiff will attempt to produce into evidence a discussion of the nature of the relationship between Edith Major and Mike Lee. Plaintiff has not shown how the relationship between Ms. Major and Mr. Lee proves how the Defendants failed to address the alleged sexually hostile work environment which she alleges was created by Library patrons. Second, there has been no testimony that Mr. Edith Major or Mr. Lee were the Plaintiffs' supervisors and there is no specific allegation that either one of them created the alleged sexually hostile work

environment. Finally, their sole relationship is not widespread in the workplace nor concerns various “multiple” relationships. *See* Broderick v Ruder, 1988 WL 66210, 46 Empl. Prac. Dec. P 38,042 (D.D.C. Jun 16, 1988) (NO. CIV.A. 86-1834) and Miller v. Dept. of Corrections, 36 Cal.4th 446, 115 P.3d 77, (Cal.2005). It would be *irrelevant and immaterial* to the issues in this case. ALA. R. EVID. 401, 402. A discussion of their relationship would serve only to confuse, mislead and prejudice the jury.

Wherefore the Premises considered, the Defendants respectfully moves this Honorable Court to preclude the Plaintiff from testifying, presenting testimony, asking, questioning, refer to, mention, or present documentary evidence in reference to the above matters in the trial. That such other and further relief be provided as the Court may deem proper.

Respectfully Submitted,

/s/Fredric L. Fullerton, II

Fredric L. Fullerton, II
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/s/Nicole E. King

Nicole E. King
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CERTIFICATE OF SERVICE

I hereby certify that on this 9 day of April, 2012 I have served a copy of the foregoing Motion upon all counsel of record in open court.

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/s/Fredric L. Fullerton, II
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