

**Maria F. G. MENDOZA, individually and on behalf of all other persons similarly situated,  
Plaintiff-Appellee-Cross Appellant,**

**v.**

**CITY OF MIAMI and David Kennedy, as chief legislative officer of the City of Miami, et al.,  
etc., Defendants-Appellants-Cross Appellees.**

No. 73-1672 Summary Calendar.<sup>[\*]</sup>

**United States Court of Appeals, Fifth Circuit.**

August 14, 1973.

Rehearing Denied September 6, 1973.

431 \*431 Alan H. Rothstein, City Atty., S. R. Sterbenz, Asst. City Atty., Miami, Fla., for defendant-appellants-cross-appellees.

Luis P. Salas, Miami, Fla., Russell E. Carlisle, Kenneth F. Tworoger, Fort Lauderdale, for plaintiff-appellee-cross-appellant.

Before THORNBERRY, GOLDBERG and RONEY, Circuit Judges.

PER CURIAM:

These are cross-appeals from a summary judgment entered against the Mayor, the City Manager, and the Chairman of the Civil Service Board of the City of Miami, Florida, in a suit brought by the appellee, an alien, concerning discrimination against aliens in the City's employment practices. We affirm.

1. The Court correctly held the civil service rule excluding aliens from employment to be unconstitutional. Sugarman v. Douglass, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973). The unconstitutionality of excluding aliens being the only issue in the case, the District Court's order striking Rule V, Section 3 of the City of Miami Civil Service Rules and Regulations must be construed to affect only the clause pertaining to citizenship.
2. There was no abuse of discretion by the trial judge in finding that \$2,800 was sufficient compensation to be awarded the cross-appellants' attorneys, which amount was supported by the affidavits introduced into evidence.
3. The City of Miami and the City of Miami Civil Service Board were properly dismissed from the suit due to improper service of process: wives are not authorized to receive service for the respective chief executive officers in their official capacities. F.R.Civ.P. 4(d) (6); F.S.A. §§ 48.111 and 120.071.
4. The cause is remanded to the District Court for consideration of an award of attorney's fees for the prosecution of this appeal.

Affirmed and remanded for consideration of attorney's fees.

[\*] Rule 18, 5th Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al., 5th Cir. 1970, 431 F.2d 409, Part I.