

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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| Chalmers Eugene Troutman, III; |) | |
| |) | CIVIL ACTION NUMBER: 3:08-cv-449-MJP |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| Leon J. Hendrix, Jr., J.J. Britton, M.D., Bill |) | |
| L. Amick, Thomas C. Lynch, Jr., Louis B. |) | |
| Lynn, Patricia H. McAbee, Leslie G. |) | |
| McCraw, E. Smyth McKissick, III, Thomas |) | |
| B. McTeer Jr., Robert L. Peeler, William C. |) | AFFIDAVIT OF CHALMERS EUGENE |
| Smith, Jr., Joseph D. Swann, the Clemson |) | TROUTMAN, III RELATING TO ITEMS |
| University Board of Trustees, Clemson |) | IN HIS POSSESSION |
| University, James F. Barker, Doris R. |) | |
| Helms and Clayton D. Steadman, |) | |
| |) | |
| Defendants. |) | |

PERSONALLY APPEARED BEFORE ME, CHALMERS EUGENE TROUTMAN, III,
who upon being duly sworn, deposes and states as follows:

1. I am the Plaintiff in this lawsuit. I have been provided with a copy of a motion, with attachments, filed by the Defendants seeking an order requiring me to return documents and items. This motion also seeks sanctions, including the disqualification of my lawyers representing me. This Affidavit is offered in explanation of my actions and in opposition to Defendants' motion. It is based upon my personal knowledge, information, and beliefs.

2. On July 16, 2007, Defendant Leon J. Hendrix, Jr. during a telephone conversation asked me to resign my job as Executive Secretary to the Clemson University Board of Trustees. During this conversation, Mr. Hendrix told me, "The Administration does not need a watchdog" and "You're doing too much." During the following thirty day period, my attorney sent a

number of letters to the Clemson University Trustees and to the University's General Counsel, Clayton D. Steadman, asking them to reconsider this request. They did not, and on August 17, 2007, I was terminated.

3. I proceeded to file a grievance at Clemson which I understood to be my right. Attached to my grievance, in accordance with the University's procedures and requirements for filing a grievance, were numerous documents from my files which I had maintained during the twenty-six months I served as Executive Secretary to the Board of Trustees and Assistant to the President. I understood Clemson and their attorney's knew I kept these documents. At no time did a representative of Clemson University or its attorneys say or do anything suggesting that my possession or use of these documents was inappropriate or unauthorized. Since 2007, Clemson's attorneys have acknowledged that I maintained copies of my files. I understand my attorneys told Clemson this on numerous occasions. I understand that one of Clemson's attorneys, Drew Rhodes, referred to me as a "pack rat" and commended me on retaining detailed files.

4. After I was terminated, I took open and obvious steps to preserve my files, many of which were stored electronically on the laptop computer I was provided by the University. Acting in what I understood to be full compliance with University policy and practices, those important files such as word processing documents, spreadsheets, images, and other similar documentation were copied onto a compact disk. I know of many employees that have copied their files onto a compact disk before leaving their employment at the University. Many of the individually-named Defendants also know that this is routinely done at Clemson. Furthermore, I do not know of any policy which expressly prohibits copying documentation from your computer. Since many employees at Clemson, including myself, worked on occasions from home, employees' personal computers at home would inevitably contain files from Clemson.

5. Also consistent with what I understood to be University policy and practice, the computer was reimaged so that sensitive and personal information could not be accessed by a third party that could later obtain that computer. Clemson University sometimes reissued used computers or sells them to third-party vendors for resale. There had been problems at the University caused by the failure to erase personal and confidential information from University computers. I received an audit report reflecting concerns at Clemson about third party vendors obtaining computers which had personal information about the prior user of that computer. That information included medical records, Social Security numbers, bank account numbers, etc.

6. I recall a conversation with Defendant Hendrix in January of 2007 regarding this problem with personal and sensitive information being disclosed by the dissemination of used computers. I recall Mr. Hendrix saying to me, "This will be really bad publicity if this gets out." Chairman Hendrix instructed me to get Defendant Clay Steadman's opinion on the matter. I did so and Mr. Steadman said, "If we cannot identify and name all the people affected, then we should not report this problem. If we report that employee's personal information was released, then employees will inquire if their personal information was part of the information released. But, since we do not know the full extent of the problem, then we will not be able to answer inquiries which means that we cannot defend ourselves from legal action" or words to that effect. Clemson intentionally took steps to not identify or name the people affected in an attempt to conceal this security breach. To the best of my knowledge and belief, there was no public acknowledgment of this problem and the individuals affected were never so advised of this problem.

7. The copying of my files and reimaging of my laptop computer was done by my son, Peter Troutman, a Clemson University student and an employee of the University's computer services department, known as CCIT. His job routinely includes copying files and the "reimaging" of used computers turned into the CCIT Department. I understand "reimaging" to mean that, after being saved, all existing files, programs, and data are replaced and reinstalled with a clean version of the operating system, programs, and data. Reimaging is the standard protocol used at Clemson to remove personal and sensitive information from returned computers. After he copied my files, I asked him to make sure my computer did not contain my personal information. To the best of my knowledge and belief, my son acted in compliance with the Clemson University Acceptable Use Policy for Employees when he downloaded the contents and reimaged my laptop computer. I never at any time attempted to delete, or cause to be deleted, any files for the purpose of concealing them from the Defendants.

8. Mr. Steadman requested I pack up and clean up my office. It was during a conversation with him that we agreed this would be done on September 1, 2007. On September 1, 2007, I returned to my office and met with Mr. Steadman in Sikes Hall to clean out my office. Defendant Steadman was present. I proceeded to pack fourteen bankers boxes with documents and items I had collected during my employment at Clemson University. I loaded these boxes into my wife's station wagon and took them to my home in Greenville. While I was packing up my office, I had conversations throughout the day with Defendant Steadman, the University's general counsel. When I ran out of boxes, Mr. Steadman voluntarily went to obtain more bankers boxes for me. At no time did Mr. Steadman advise me what I should or should not take. He said nothing reflecting any concern about the many items, files and documents packed into these boxes. He never suggested that some documents should be left in the office or given to

others for safekeeping. He never mentioned the term "official records." After the boxes were packed, I recall asking Mr. Steadman, "Do you want to look through all this stuff I've packed up before we carry it down?" Mr. Steadman responded by stating, "No, that's all right, I don't need to do that" or words to that effect. After my office was completely cleaned out, I showed Mr. Steadman the empty drawers of the desk and told him, "It's cleaned out, just the way I found it." Mr. Steadman acknowledged this and thanked me. I fully understood and believed he approved of everything I had done that day. I had no reason to believe that it was improper for me to retain these documents, especially since I had a pending grievance action filed regarding my First Amendment Rights.

9. None of the documents I packed and retained are, in my opinion, "official records" of the University. To my knowledge, none of the documents I packed and retained was the only copy of that document. Numerous people who left Clemson University employment took files with them. These people include past Presidents Robert C. Edwards and Walter Cox, former Vice Presidents Almeda Jacks and Nick Lomax, as well as numerous professors, including Dr. Linda Fulton.

10. These documents are materials that I knew and understood that I could take. The documents which were downloaded onto the disk from my laptop computer included the entire contents of a compact disk previously given to me by Thornton Kirby, my predecessor as Executive Secretary to the Board of Trustees. Thornton Kirby did just as I did, copied and retained his files from Clemson. My downloaded laptop computer disk and all copies of it I know of are now in the possession of the attorneys representing Clemson University. I delivered these disks to the attorneys representing Clemson University. To the best of my knowledge and

belief, nothing was erased from any of them. I have retained a copy of the Thornton Kirby disk which he gave to me.

11. The letter I received from Isaac Wallace demanding the return of documents was mailed by Linda Allen. Her signature appears on the form which came with the letter. That form is a waiver of the requirement that I sign for the letter. I know Ms. Allen to be the personal secretary to Defendant Clay Steadman. Her office is in Sikes Hall, as is Mr. Steadman's. Mr. Wallace's office is located in a building on the Anderson Highway, a substantial distance from Sikes Hall. I believe it reasonable to infer that this letter was the idea of Mr. Steadman, and not of Mr. Wallace. To my knowledge, Mr. Wallace has never sent such a letter as this to any person who has left employment of Clemson University.

12. I have prepared an index to the contents of the fourteen boxes of items I removed from my Sikes Hall office. That list has been provided to the attorneys for Clemson University. They have been offered copies of anything on the list, including another copy of the Thornton Kirby disk. To my knowledge, they have made no such request.

13. In compiling my list of documents known by me to exist, I also identified any documents which I received at Clemson that were marked "Attorney Client Privilege." Those documents and all copies were returned to the Clemson University attorneys without copies having been made by me. There were only two documents marked Attorney Client Privilege which I had shared with my attorneys. The first was a memorandum prepared by Clay Steadman analyzing the provisions of the will of Thomas Greene Clemson. Although it is marked "Attorney-Client" Privilege, I have personal knowledge this document was widely disseminated and shared with people who could not reasonably be considered clients of Mr. Steadman. One person who I have confirmed received a copy of this memorandum from Mr. Steadman is Ms.

Nancy Loeb of Las Vegas, Nevada. She attended a Clemson University Trustees' meeting and received a binder full of documents, including this memorandum. I was also provided with a copy of that binder. That is how the memorandum came into my possession. Because this memorandum was shared with a number of people who are not Trustees of the University and it had nothing to do with legal advice, I had no reason to believe this document would be within the scope of attorney client privilege. My understanding is that privilege was waived by its wide dissemination.

14. My understanding of the law of waiver of the attorney-client privilege is consistent with a letter written by Mr. Steadman to Trustee J.J. Britton. This letter was attached to that memorandum. Mr. Steadman's letter states the privilege is waived when the document is circulated outside the circle of people who have an attorney-client relationship.

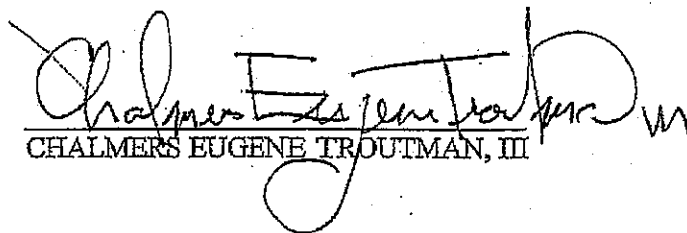
15. The only other document stamped attorney client privileged I shared with my attorneys was a copy of an email sent to various Clemson employees by Clayton Steadman stating his instructions about the retention of documents they might have in their possession relating to me. On information and belief, this email was sent to scores, if not hundreds, of people and therefore not an attorney client communication. This email was sent anonymously to me. I returned my copy of it. I am advised the copy I sent to my attorneys was destroyed.

16. I have tried in good faith to comply with all laws, regulations, policies and court rulings, including the instructions of Senior United States District Judge Matthew Perry relating to my handling of all documents and items in my possession which in any way relate to Clemson University.

17. Many of the documents I retained are material to my lawsuit. I fear that if I am required to return (and not retain any copies) my complete file, then I will never see it again. For

example, I returned the disk containing my computer files with the explicit agreement with Mr. Drew Rhodes, attorney for the Defendants, that he would give me a copy of that disk. As soon as I gave the disk to Mr. Rhodes, he has refused to make me a copy. I was fired for speaking out. I believe Clemson wants my documents to prevent me from further speaking out about fiscal irregularities and problems at Clemson that affect taxpayers, which I believe is my First Amendment right.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.



CHALMERS EUGENE TROUTMAN, III

SWORN to and SUBSCRIBED before me
 this 20 day of December, 2008

Wendell D. Simpson (L.S.)

NOTARY PUBLIC for South Carolina

My Commission Expires: 9/29/2016