

independentmail.com
ANDERSON, SOUTH CAROLINA

Important browser update available
Remind me again in 6 hours

Federal court turns down Clemson University lawsuit appeal

By John Staed

Originally published 01:31 p.m., March 17, 2009

Updated 09:00 p.m., March 17, 2009

CLEMSON UNIVERSITY — A federal court has issued an order denying Clemson University's petition for a rehearing of a motion to dismiss a lawsuit against the school and its trustees.

The U.S. 4th Circuit Court of Appeals filed the order Monday regarding the Feb. 26 request by Clemson attorneys asking the court to rehear a Feb. 12 order by a 4th District judge. The appeals court judge had denied Clemson's claim that the school, as an arm of the state, was immune to the lawsuit.

Former Clemson Board of Trustees Executive Secretary Eugene Troutman sued the university on Jan. 9, 2008, after he was fired from his position with the board. Troutman claimed in the lawsuit that he was fired because he criticized the university for its increases in tuition and fees as being unnecessary, and that the university board used tuition money to help build an \$80 million, unrestricted fund balance. He also questioned raises given to school administrators.

School officials denied wrongdoing, said Troutman did not establish an effective working relationship with the board and administration and circumvented trustee policy when he reorganized its internal auditing division.

The case started in state court but was moved to federal court and has been through a number of hearings since then. No trial date has been set, said Troutman's attorney, Joel Collins of Columbia.

Another hearing is scheduled in federal court in Columbia on March 24, Collins said. That hearing is to determine whether two documents reviewed by Troutman's attorneys can be used in the case.

The defendants claim the documents were marked as "attorney-client" and carried privilege, thus can't be used. But Collins said, "We don't believe they were marked properly, and any privilege has been waived."

Thomas A. Bright, who represents Clemson University in the lawsuit, said Tuesday in a statement that "the underlying issue in the matter before the 4th Circuit is whether Clemson University is an alter ego of the state of South Carolina. The law provides immunity from suit in federal court for the state and alter egos of the state."

Legislative control of the university and state compensation and grievance procedures for staff members, among other issues, "support Clemson's position that it is an alter ego of the State of South Carolina and, thus, immune from suit in federal court," Bright wrote in an e-mail.

"This issue was argued before Judge Perry, the (federal) District Court judge, and he ruled that Clemson

<http://www.independentmail.com/news/2009/mar/17/federal-court-turns-down-clemson-un...> 3/17/2009

was a 'municipality.' However, he did not directly address whether Clemson University was an alter ego of the state, entitled to sovereign immunity. The 4th Circuit reviewed Clemson's appeal and, in an order dated Feb. 12, remanded this specific issue to Judge Perry for a ruling. Importantly, it appears that the 4th Circuit has retained jurisdiction to review Judge Perry's decision on this issue.

"The 4th Circuit has also ruled that a second issue involved in Clemson's appeal is premature, but can be raised at a later point in the proceedings. That is the significance of the 4th Circuit's ruling ... March 16," Bright wrote.

