

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

Chalmers Eugene Troutman, III,)
)
 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. Smith, Jr.; Joseph D. Swann; the)
 Clemson University Board of Trustees;)
 Clemson University; James F. Barker;)
 Doris R. Helms; and Clayton D. Steadman,)
)
 Defendants.)
)

Civil Action Number: 3:08-cv-449-MJP

**DEFENDANTS' MOTION IN LIMINE AND
MOTION FOR PROTECTIVE ORDER**

COME NOW the Defendants in the above-captioned case, by and through their counsel, Ogletree, Deakins, Nash, Smoak and Stewart, P.C., and file this their Motion In Limine and Motion for Protective Order to preclude Plaintiff from referring in any way to an attorney-client privileged memorandum dated May 11, 2006, and drafted by the General Counsel of Clemson University, Clay Steadman. Defendants took all appropriate emergency measures to have Plaintiff's opposition memorandum and the attached affidavit including the May 11, 2006 memorandum removed from PACER and public view at the time it was filed. In addition, a legal analysis of this issue is contained in Defendant's reply brief previously filed with this court. (See docket entry 96, filed August 18, 2008.)

This memorandum was distributed to University Trustees, Administrators and employees in preparation for the 2006 Summer Trustee meeting where the topic of the executive session was the governance model at Clemson University. (Ex. 1, ¶ 7, 10.) The cover memorandum from Mr. Steadman to Trustee J. J. Britton states that the memorandum is covered by the attorney-client privilege and the document itself is stamped, "Confidential Attorney-Client Communication." The distribution of the memorandum to those who attended the 2006 retreat, including Plaintiff, all of whom were invited to participate in the retreat to discuss the governance model at Clemson, was intended to provide them legal guidance in understanding issues set forth in the Will of Thomas Green Clemson as they related to the governance model at Clemson (Ex. 1, ¶ 7, 10). This was a subject to be discussed in executive session at the retreat. The privilege was clearly stated on the document, the memorandum was provided to Plaintiff due to his role as Executive Secretary to the Board of Trustees and a participant in the retreat, and the University has taken reasonable steps to preserve the attorney-client privileged nature of the memorandum. Plaintiff's action in including this privileged communication in his Memorandum In Opposition to Defendant Clemson University's Motion To Dismiss Plaintiff's Section 1983 Claim constitutes a blatant disregard of the attorney-client privilege and a breach of his fiduciary duty to maintain the confidences shared with him as Executive Secretary to the Board.

For these reasons, Plaintiff should be precluded from referring in any way to this memorandum as it constitutes an attorney-client privileged communication and the privilege has not been waived by the University. In addition, Defendants request an order instructing Plaintiff to immediately return all like documents in his possession.

Dated this 12th day of September, 2008.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Thomas A. Bright

Thomas A. Bright (Fed. Bar No. 1476)

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Attorneys for Defendant Clemson University

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Plaintiff,)	
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vs.)	Civil Action Number: 3:08-cv-449-MJP
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William C. Smith, Jr.; Joseph D. Swann; the)	
Clemson University Board of Trustees;)	
Clemson University; James F. Barker;)	
Doris R. Helms; and Clayton D. Steadman,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I, Thomas A. Bright, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' MOTION IN LIMINE AND MOTION FOR PROTECTIVE ORDER** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following persons:

Joel W. Collins, Jr., Esq.
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor
Columbia, SC 29201

D. Reece Williams, III, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, SC 29201

Dated this 12th day of September, 2008.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/ Thomas A. Bright

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6646771.1 (OGLETREE)

EXHIBIT – 1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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 Smyth McKissick III; Thomas B. McTeer Jr.;)
 Robert L. Peeler; William C. Smith Jr.; and)
 Joseph D. Swann, all in their individual)
 capacities and in their official capacities;)
 the Clemson University Board of Trustees;)
 James F. Barker; Doris R. Helms; and Clayton)
 D. Steadman, all in their individual capacities)
 and in their official capacities,)
)
 Defendants.)
 _____)

Case No. 3:08-cv-00449-MJP

**AFFIDAVIT OF
CLAYTON D. STEADMAN**

I, Clayton D. Steadman, being duly sworn to tell the truth, hereby state as follows:

1. My name is Clayton D. Steadman. I am over the age of 18 years and am competent to testify as to the matters stated herein. The statements contained herein are made of my own personal knowledge.

2. I am a member in good standing of the South Carolina Bar (S.C. Bar number 74619). I have been admitted since September, 2005.

3. I am General Counsel for Clemson University, and have held this position since August 2004. In this position, I represent the University and the Board of Trustees of Clemson University. In appropriate circumstances, I represent individual Trustees and individual employees of Clemson University.

3. My business address is 207 Sikes Hall, Clemson University, Clemson, SC 29634-5003. I reside in Pickens County, South Carolina.

4. I am a Defendant in the above-captioned case.

5. On or around May, 2006, I was asked by the Board of Trustees, my client, to conduct an analysis of the Will of Thomas G. Clemson in order to provide legal advice on the governance model at the University.

6. In response to my client, the Board of Trustees, I prepared a memorandum relating my analysis. Said memorandum was clearly marked "CONFIDENTIAL ATTORNEY - CLIENT PRIVILEGE" ("Memorandum").

7. The Memorandum was shared with the Board of Trustees and other Clemson University employees who, because of their positions within the University, were invited to participate in the discussions involving the Clemson University governance model. These discussions occurred in Executive Session at the 2006 Summer Board Retreat.

8. The Memorandum was also handled by administrative personnel who prepared the notebooks under the direction of Gene Troutman in the Office of the Executive Secretary as well as the administrative personnel for the Office of the General Counsel

9. I believe all persons who handled said Memorandum in an administrative capacity did so under the direction of myself and/or my client, The Board of Trustees. Their handling of the Memorandum was for the sole purpose of meeting clerical needs, and I believe that such was the case.

10. To the best of my knowledge and belief, all persons who viewed this Memorandum on a substantive basis did so in preparation for their participation in discussions regarding the governance model for the University. There has been no waiver, knowing or

inadvertent, of the attorney-client privilege.

11. At no time did I give permission to plaintiff Gene Troutman to appropriate the Memorandum for his personal use or to share that Memorandum with any person other than those mentioned above.

12. I have given this Affidavit freely and voluntarily without promise of benefit or threat of reprisal.

13. I have read this Affidavit, and the statements made herein are my own and are true and correct based on my personal knowledge, except where I offered statements on the basis of my belief, and in those cases I believe the facts to be true.

Dated this 12th day of September, 2008.

Clayton D. Steadman
Clayton D. Steadman

Sworn to and subscribed before me
this the 12th day of September, 2008.

Judith A. MacLain
Notary Public for South Carolina
My Commission Expires: My Commission Expires October 1, 2011

