

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

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

**PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER**

Plaintiff Chalmers Eugene Troutman, III, ("Troutman") pursuant to Rules 26(c) and 37, FRCP, moves for an order to protect him from further threat, harassment, oppression, undue burden, and the unfairly prejudicial demands of the Defendants to return any and all documents obtained by Troutman during his employment with Clemson University.

Defendants have not served Troutman with any discovery requests. Instead of requesting and exchanging documents through discovery, Defendants have demanded that Troutman return (and not retain) any and all documents related to his case that he obtained during his employment with Clemson University. See Exhibit 1, Letter from Drew Rhodes dated October 14, 2008; Exhibit 2, Letter from Joel W. Collins, Jr. dated October 16, 2008.

Today, on October 24, 2008, Troutman received a letter from Mr. Isaac Wallace of Clemson University demanding the return of "any and all documents obtained by you during or

at the expiration of your employment with Clemson University” with fifteen (15) days pursuant to S.C. Code § 30-1-10 *et. al.* See Exhibit 3, Letter from Isaac Wallace dated October 24, 2008. This statute provides criminal penalties. A person who refuses or fails to deliver documents as required by this statute within fifteen (15) days is guilty of a misdemeanor and, upon conviction, is fined not exceeding five hundred dollars. S.C. Code § 30-1-50. Further, it allows Defendants to file a petition in the state court of common pleas for an order requiring the return of all records. Id.

Defendants’ demand that Troutman and his attorneys return any and all documents related to his case is wholly without merit and violates the letter and spirit of the rules of discovery. Troutman has delivered the computer disk containing an electronic copy of his files and documents related to his case to the Defendants based on the agreement that Defendants’ would produce that disk in discovery. Defendants’ attorney Joseph A. Rhodes Jr. agreed to produce the disk in discovery. He has since changed his position. See Exhibit 4, Letter from Joseph A. Rhodes Jr. dated October 23, 2008.

Now, Defendants are threatening Troutman with criminal prosecution because he disagrees that he must return (and not retain) any and all documents from his employment that relate to the claims and defenses in this litigation. These demands are a deliberate attempt to circumvent discovery rules and the oversight of the discovery process by this Court. These demands are improper, malicious, and in violation of the rules of discovery. These demands are also inconsistent with the Rules of Professional Conduct. See South Carolina Rules of Professional Conduct, Rule 4.5 (“A lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter.”) This rule also prohibits a lawyer from directing his client to threaten criminal

prosecution for issues related to a civil matter. See South Carolina Rules of Professional Conduct, Rule 8.4 (“It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another....”).

For these reasons, Troutman requests an Order from this Honorable Court to:

(a) protect him from returning (and not retaining) any and all documents related to this case was obtained during his employment with Clemson University;

(b) prohibit and forbid the surrender of documents – except as may be required by the Federal Rules of Civil Procedure;

(c) prohibit and forbid any further action taken by Defendants pursuant to S.C. Code § 30-1-10 *et. al.*, including but not limited to, the issuance of an arrest warrant, the issuance of a search warrant, or the seeking of an indictment or any other form of criminal charges;

(d) protect Troutman from further action taken by Defendants, or Defendants’ counsel, that would annoy, oppress, threaten Troutman with any civil or criminal actions for maintaining documents now in his possession which may be used as evidence in this action;

(e) require Defendants to comply with the Rules of Civil Procedure in requesting, exchanging, and obtaining documentation maintained by Troutman;

(f) require Defendants to produce a true and accurate copy of the disk of electronic files given to Defendants by Troutman; and

(g) such other and further relief as this Honorable Court deems just and proper pursuant to Rule 37(a)(5), FRCP.

Counsel for Troutman certifies he attempted to confer with Defendants regarding this matter and any that any such further attempt to resolve this matter would serve no useful purpose pursuant to Local Rule 7.02. See Exhibits 1, 2, and 3.

Respectfully submitted,

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October 24, 2008

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CERTIFICATE OF SERVICE

This is to certify that on this 24th day of October, 2008, a true and correct copy of the Plaintiff's Motion for Protective Order is being electronically transmitted to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

COUNSEL SERVED:

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/s/ Joel W. Collins, Jr.