TTO Exclusive: Clemson Obstruction, Legal Fees Mount

By fitsnews • on April 9, 2009

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In the *Troutman v. Clemson* University lawsuit currently pending in Federal Court, Clemson and its counsel continue to delay by arguing legal technicalities and procedural minutia at every opportunity to avoid open discovery and public disclosure of the facts. In response to a FOIA request by Ned Sloan, Chairman and founder of the South Carolina Public Interest Foundation, a Greenville based, nationally recognized watchdog organization dedicated to exposing the abuse of taxpayer dollars, it has been revealed that the Clemson Administration has paid the Ogletree law firm $624,277.65 for their defense against the Troutman suit to date.

Sloan's FOIA request, however, only inquired about the "legal costs incurred by Clemson University and the Clemson University Board of Trustees…for their legal defense against suit by Chalmers Eugene Troutman III." Neither the FOIA request nor Clemson's response addresses whether others, such as the Clemson Foundation or the South Carolina Insurance Reserve Fund, have paid legal costs on behalf of the University and the Trustees.

A hearing that was scheduled for February 26, 2009 is now scheduled to be heard on April 28th, 2009; on April 28 the court will hear Clemson's motion for a partial lifting of the stay which they

originally requested and were granted on November 6, 2008. That stay put all proceedings in Judge Perry's courtroom on hold as Clemson went straight to the U. S. 4th Circuit Court of Appeals in Richmond Virginia to request that they overturn Perry's earlier decision on September 16, 2008, to not dismiss Troutman's complaint.

On December 15, 2008 Clemson filed a motion to partially lift the stay to hear two other Clemson motions. One of the motions Clemson seeks is to claim that all of Troutman's personal files from his employment at Clemson should be regarded as Clemson property and therefore be surrendered to Clemson. Troutman has offered to provide copies of his files, but Clemson insists that he not retain either his files or copies of his files.

Secondly, Clemson requests that the stay be lifted in order to hear a motion to sanction Troutman's lawyers and remove them from the case for viewing two memorandums Troutman provided to them that were marked by Clemson General Counsel Clay Steadman as Attorney-Client Privilege. In response to this motion, Troutman's counsel contends that the facts surrounding the documents do not support the legal standard for invoking the protections of the privilege.

Troutman's counsel notes in correspondence to the court that Steadman marked as privileged an email that addressed a public relations matter not a legal matter, and also a report that addressed no specific legal matter but rather a business matter involving the University's legal autonomy as provided by the Will of Thomas Green Clemson, and authorized by legislation via the General Assembly's Act of Acceptance.

Moreover, they say Troutman contends that the recipients of the documents distributed them to others not named as privileged and no measures were taken to subsequently ensure privilege. Given these circumstances, Troutman shared copies of the two documents with his counsel. Nevertheless, Clemson persists in their argument that Troutman's counsel be disqualified.

On February 12th, 2009, as the scheduled hearing for the partial lifting approached, the 4th Circuit issued its order on Clemson's appeal; it was denied. The Greenville News issued two reports on the 4th Circuit's ruling. One was published in a "Greenville Online" report and stated that Clemson had lost. The other report was printed in their paper edition. In the paper edition, Clemson's press release reflected on the ruling.

Clemson's press release declared the ruling a victory for Clemson. Despite what Clemson declared as victory in the public view, however, they then sought to "appeal the appeal."

On February 26, 2009, Clemson "appealed the appeal." They again filed in the 4th Circuit to ask the Court to reconsider. This followed the cancellation of the earlier scheduled February 26th hearing, which was delayed due to the judge falling ill. The hearing was rescheduled for March 26, 2009, but this date too was subsequently cancelled.

On March 16, 2009, the 4th Circuit ruled on Clemson's second appeal. Clemson was again denied and instructed by the Court to follow their original order. On March 18, 2009, in light of the 4th Circuit's ruling, Troutman's counsel submitted a request to Judge Perry asking that his

hearing scheduled for March 26th be expanded to include another motion by Clemson involving their claims to sovereign immunity.

This motion by Clemson seeks to establish that Clemson is an "arm of the state." Troutman's counsel has pointed out that this argument contradicts and violates the Will of Thomas Green Clemson which establishes that Clemson is an autonomous political subdivision governed by the Board of Trustees. Clemson's "arm of the state" defense, however, is essential to their effort to claim the state's protection of sovereign immunity. This motion was originally scheduled to be heard in July of 2008.

On Monday, March 23, 2009, Judge Perry held a conference call with the Clemson and Troutman counsel to discuss adding this motion to the March 26th hearing. Clemson, however, requested more time. As a result, the hearing expected on March 26th is now scheduled to be heard on April 28, 2009.

Clemson is apparently taking every measure it can to keep this case out of the courtroom where the facts of Mr. Troutman's complaint can be heard and argued publically. Ironically, while the "arm of the state "defense Clemson is mounting could assist them in the current legal battle, it could also serve to totally undermine Clemson and the Board of Trustees' in the much greater and much more significant contest that involves the Governor and other reformers ' desire to challenge and supplant the Clemson Board's authority and, especially, their autonomy.

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