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Lawyers can't explain delay in Clemson ruling

Federal judge has had case almost 8 months

*By Tim Smith
Capital bureau*

COLUMBIA — Nearly eight months after lawyers expected U.S. Senior District Judge Matthew Perry to rule on a motion to dismiss a lawsuit against Clemson University brought by its former board secretary, there is no decision or any idea about what is causing the delay.

"To be honest with you, I don't know what's going on," Thomas Bright, one of the Greenville lawyers representing Clemson University, told *The Greenville News*.

Joel Collins, a Columbia lawyer representing Eugene Troutman, also said he cannot explain why Perry hasn't ruled.

"We know what's going on — nothing," he quipped. "I don't know why."

Perry, 88, told lawyers in the case nine months ago after hearing arguments on Clemson's motion that he wanted to see any written materials within 20 days and then he would rule. There has been silence from the bench ever since.

"Every decision that has been rendered by Judge Perry in this case with one or two exceptions has been issued from the bench so we've gotten immediate feedback," Bright said. "I can't explain it."

Perry could not be reached for comment.

Lewis Burke, a University of South Carolina law professor who co-edited a biography on Perry, said it is not unheard of for key decisions in federal court to take a long time.

"I once had a death penalty case that a United States District Court judge sat on for seven years," he said. "So long delays are not totally unheard of. Why Judge Perry would take this long in that particular case, I don't have any idea."

Burke said one potential factor could be his criminal caseload, which takes priority over his civil caseload.

"I'm sure he's doing lots of criminal stuff," he said. "He certainly considers those a higher priority than some civil case like this."

Troutman's lawsuit alleges he lost his job, in part, after he spoke out about "excessive" salary increases given to some university administrators.

Troutman also alleged in his suit that increases in tuition and fees at Clemson weren't justified by cuts in state appropriations, and that trustees "hoarded" cash from tuition increases to build an unrestricted \$80 million fund.

The trustees and school officials have denied any wrongdoing.

They said in court filings Troutman improperly circumvented the trustees' policy manual by reorganizing the Internal Auditing Division and said he failed to establish and maintain effective working relationships with members of the board, faculty representatives and the administration.

Perry in 2008 refused to dismiss the suit, causing Clemson to go to the 4th U.S. Circuit Court of Appeals, which last year refused to side with the university.

It sent the issue of whether the school is immune from such lawsuits back to Perry to decide.

Clemson's lawyers argued last April that the school is an arm of the state and thus immune from such litigation.

But Collins called Clemson's argument an "insult," saying the school is a municipal corporation and argued in another court case 10 years ago that it was independent of the state.

Meanwhile, one of the issues that spun out of the case is being investigated by the State Law Enforcement Division.

Collins last fall wrote a letter to Solicitor Bob Ariail, Greenville County Sheriff Steve Loftis and Greenville County magistrates in which he said Clemson lawyers have refused to assure Troutman that they wouldn't seek an indictment, arrest warrant or search warrant for his home because of 14 boxes of documents he took with him when he left the university, *The Greenville News* reported last year.

Collins said he's confident Troutman's removal of Clemson records was not only legal but explicitly approved by the university's general counsel, in keeping with university policy and common practice for departing employees.

A spokesman for Ariail said the SLED probe began before Christmas and is ongoing.

Collins said in the letter that Troutman ultimately returned his boxes of documents to avoid a protracted legal battle but was told in a telephone call that Clemson could still "proceed in any fashion," giving Troutman and his wife cause for concern.