

REPLY BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

REPLY BRIEF OF APPELLANT

RECEIVED
JUN 19 2013

SC Court of Appeals

Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

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STATEMENT OF THE CASE

On July 16, 2012, Lawrence Terry brought this action alleging LIBEL, NEGLIGENCE, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, CONSTRUCTIVE FRAUD, AND SILENT FRAUD against Allen University. Allen was served the Original Complaint, Summons, and Initial Requests For Admissions on July 30, 2012 and one day later on July 31, 2012 Allen University responded by filing a Motion To Dismiss.

On August 10, 2012 the Appellant properly filed and served an Amended Complaint to only allege Negligence and Intentional Infliction Of Emotional Distress, so not to waste the court's time. On August 27, 2012 Appellant filed a Motion For Summary Judgment.

An Affidavit Of Default was filed on September 11, 2012 after the Respondent failed to file any response to the Amended Complaint. On September 14, 2012 the Appellant properly filed a Motion For Default Judgment.

Without any prior notice or a hearing, The Honorable Judge L. Casey Manning abruptly filed a Form Order Dismissing the case With Prejudice on September 17, 2012. A Motion For Reconsideration was filed on September 18, 2012 by the Appellant and additional documents in support of said motion were also later filed. Appellant made it clear in said motion that no notice was provided or a hearing. Reconsideration was denied February 11, 2013. Both Form Orders only stated that the case was dismissed but did not provide any explanation or reasoning. The Clerk Of Court, without motion or order, corrected the Respondent negligent actions by refiling their 8/8/2012 Motion For Protective Order, 8/28/2012 Motion For Protective Order, and 8/28/2012 Renewed Motion to Show Cause. These additions would completely change the case.

ARGUMENT

I. **BECAUSE NO NOTICE WAS GIVEN OR A HEARING HELD THE CASE SHOULD NOT HAVE BEEN DISMISSED BECAUSE THE APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED.**

It is often difficult to define "due process.", but it is not difficult for attorneys and judges to agree that if due process means anything, it means that a litigant must be given an opportunity to meet an issue before an adverse determination is made. "It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." Tryron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. *Id.* The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

As to Appellant's right to a hearing on the circuit court's abrupt dismissal: See Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 353-54 (2008) ("Due process considerations apply in contested cases or hearings which affect an individual's property or

liberty interests as contemplated by the federal and state constitutions. The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.") (internal citations omitted) (emphasis added); see also State ex rel. McLeod v. Brown, 278 S.C. 281, 284, 294 S.E.2d 781, 782 (1982) ("We believe that an order substantially affecting a party's rights should not be made in a case without notice to the party prejudiced by it and an opportunity to be heard.") (emphasis added).

II. RESPONDENT SHOULD HAVE PROPERLY RAISED THEIR ISSUES UPON MOTION TO THE LOWER COURT INSTEAD OF NOW.

The Respondent failed to respond to the Amended Complaint. The Respondent is attempting to argue their points now in the Appeals Court when they should have properly raised their concerns by motion or during a hearing in the lower court, but neither was provided. Appellant will not entertain all of their current issues but will state that the order of dismissal only had two sentences with no reasoning or explanation behind the dismissal. The order denying the motion for reconsideration only had one sentence with no reasoning or explanation behind the dismissal. Both attached exhibits A & B. The Appellant included newly discovered evidence in his Motion To Reconsider that also shows negligence on the part of Allen University, The Family Educational Rights and Privacy Act. Appellant appealed the lower court's decision as the order

directed. The Respondent has agreed that no hearing was held. The Appellant properly replied and responded to everything that was submitted according to the docket.

III. RESPONDENT WAS NEGLIGENT IN HANDLING THEIR CASE AND DID NOT FOLLOW THE RULES OF CIVIL PROCEDURES AS REQUIRED.

The Respondent responded to the initial complaint 1 day after it was served and that response had all of the proper information for the clerk of court to file it in this case. Along with the initial Complaint and Summons were the Appellant's first Requests For Admissions. It was first brought to the Circuit Court's and Respondent's attention on 9/11/2012 in the Appellant's Brief in Support of Motion For Summary Judgment that the Respondent failed to respond to the Request For Admissions and that all requests were deemed admitted, attached exhibit C. Respondent did not reply or motion the court for any type of relief from the failure to respond. In the Motion for Default Judgment filed on 9/14/2012 Appellant brought it to the court's attention again that the Respondent failed to respond to the Amended Complaint and Requests For Admissions. Then on 9/18/2012 the Appellant AGAIN brought it to the Circuit Court's and the Respondent attention in the Motion For Reconsideration that no response to the Amended Complaint and Requests For Admissions were filed and yet the Respondent still did not motion the court relief or provide an explanation for the failures. The Appellant provided screenshots of the docket as proof. Appellant went on to file 7 more documents with the court between September 19, 2012 and December 13, 2012 reiterating the material facts that Allen University

failed to properly file any response or reply to the Requests For Admissions and Amended Complaint on the docket.

Now in the Respondent's Initial Brief they make claims that they did file responses to the Requests For Admissions and Amended Complaint. On page 3 of their Initial Brief Allen University even attempts to blame the clerk of court for their negligence in handling their case by stating at the bottom of the page, "Allen notes that apparently the clerk of court initially filed the renewed motions with Appellant's fourth lawsuit, rather than the present lawsuit. When brought to the clerk's attention, the clerk refiled the motions with the present action." This change was made in February 2013, five months later. As I previously stated, I pointed out the fact that the Respondent failed to reply or respond approximately 9 times in multiple documents filed with the court between September to December 2012. In the PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION filed 10/8/2012, the Appellant made the Respondent's negligence in handling their case very clear by specifically stating on page 1 line 24, "*Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff.*" That document is attached exhibit D. After receiving this notice of their negligence again the Respondent did not motion the court for any relief. Even the letter the Respondent just sent to the Appellant and Court of Appeals dated June 13, 2013 references "Civil Action No. 2010-CP-40-02301", attached exhibit E. The Appellant and Clerk Of Court do not have time to monitor the many errors of the Respondent or their seasoned legal team.

Our Court of Appeals have long held, "a party has a duty to monitor the progress of his case." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001) (quoting Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988)).

IV. THE APPELLANT WOULD BE DEEPLY PREJUICE IF THE FRAUDLENT CHANGES MADE TO THE DOCKET ARE ALLOWED TO REMAIN.

Allen University's negligence was clearly brought to their attention and the court's attention on October 8, 2012. The Respondent stated in their Initial Brief, "When brought to the clerk's attention, the clerk refiled the motions with the present action." but yet the docket shows no motion requesting the court make these changes. Rule 7(b)(1), SCRPC, states: "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

The Case History for this case, attached exhibit F, states that these changes were made February 22, 2013, approximately five months after it was first brought to both the court's and Respondent's attention. The Respondent did not discover this until 6/14/2013. The Clerk Of Court, without motion or order, corrected the Respondent negligent actions by refiling their 8/8/2012 Motion For Protective Order, 8/28/2012 Motion For Protective Order, and 8/28/2012 Renewed Motion to Show Cause. The Appellant was not given any notice of these changes and the negligent addition of those invalid motions to the docket would completely change the dynamics of the case as a whole and truly prejudice the Appellant who has followed all of the rules of civil procedures while the Respondent has not. The Respondent is well represented by experienced legal counsel from one of the largest law firms in the United States of America. Where an attorney is merely neglectful, the general rule applies and relief from judgment is

unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client.

In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he was involved in a multi-day trial. As a result of defense counsel's failure to answer the complaint, the court entered a default judgment against defendant. On appeal, our supreme court was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and imputed the neglect of counsel to his client. The court explained:

[T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a mistake such as the record here discloses is understandable; but it entails the penalty of default under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords no basis for reversal.

Id. at 550-51, 99 S.E.2d at 394.

**V. IF NOT FOR THE CIRCUIT COURT'S ERROR IN DISMISSING
THE CASE THEN THE ENTRY OF DEFUALT WOULD HAVE
PROCEEDED AGAINST ALLEN UNIVERSITY.**

In the case of Morgan v. State Farm Mutual Insurance Co., 229 S.C. 44, 91 S.E. (2d) 723, 724, the plaintiff made a motion for permission to enter up a default judgment against the Insurance Company, and it applied for extension of time in which to file an answer. The court entered an order refusing the extension of time in which to file an answer and authorized the plaintiff to proceed with the entering up of a default judgment. The Company appealed. The court, in disposing of the appeal, said:

"And his conclusion thereabout will not be disturbed unless there is a clear showing of abuse of discretion. While the motion in the instant case was made prior to the entering up of the judgment and not after such judgment had been entered up as in most cases, the reasoning and language of the Court in such cases is apropos here. See, Poston v. State Highway Department, 192 S.C. 137, 5 S.E. (2d) 729; Pruitt v. Burns, 212 S.C. 325, 47 S.E. (2d) 785; Savage v. Cannon, 204 S.C. 473, 30 S.E. (2d) 70; Brown v. Nix, 208 S.C. 230, 37 S.E. (2d) 579; Marthers v. Hurst, 226 S.C. 621, 86 S.E. (2d) 581."

Quoting again from the case of Morgan v. State Farm Mutual Insurance Company, *supra*, Mr. Associate Justice Stukes, now Chief Justice of the Supreme Court, in a concurring opinion, used language very appropriate to the matter under consideration. He said: "Neglect is shown, but no excuse for it." [229 S.C. 44, 91 S.E. (2d) 725.]

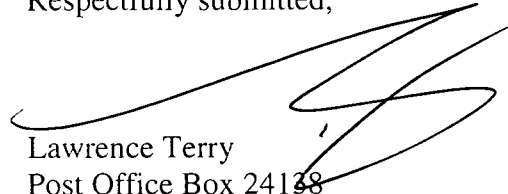
Although the entry of default was properly filed but not yet entered it is still clear that "Neglect is shown" by the Respondent's multiple failures and negligence in handling their case, "but no excuse for it." There were no pending motions by the Respondent on the docket and there was no reasoning or excuse to dismiss the case without first hearing all the other pending motions or at least hold a hearing. Allen was in Default. The apparent errors in correcting the Respondent's multiple filing mistakes truly prejudice the Appellant by changing the complete dynamics of this case. The Appellant respectfully request that this court address this issue too.

CONCLUSION

Because both parties agree on the due process violation with the Respondent making it very clear in their letter to this Appeals Court dated February 25, 2013(attached Exhibit G) that, **“there was no hearing or other proceedings in this case”**, the circuit court's order of dismissal should be reversed for failure to conduct a hearing. The Respondent did not answer or otherwise responded to the Amended Complaint. If the Entry of Default and Appellant’s Motion For Default Judgment is not granted, Appellant will likely be without other recourse for recovery and Appellant will be forced to suffer continued irreparable injuries in the form of lost reputation, lost opportunities, and goodwill everyday that the false and misleading statements remain on Appellant’s student records. If not for the circuit court’s error in dismissing the case then the entry of default would have proceeded and motion for default judgment granted. Appellant will truly be prejudice if this Appeals Court does not also address the status of the entry of default and error of the Clerk Of Court by correcting the mistakes of the Respondent 5 months later without a motion or an order addressing them to.

For the reasons stated, this Court should reverse the Order of the Circuit Court and allow the Entry Of Default to be entered.

Respectfully submitted,



Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
Appellant, Pro Se

June 19, 2013

Exhibit A

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012-CP-40-04857

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC; Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code 2061 Date 9/5/12

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of Sept, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)
Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)
Clerk of Court [Signature]

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Lawrence Terry

CASE NUMBER: 2012-CP-40-4857
Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC; Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*): Affirmed; Reversed; Remanded; Other _____

RICHLAND COUNTY
 FILED
 2013 FEB 11 AM 10:44
 JENNIFER H. McBRIDE
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge, may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *J. Wesley Murray* Judge Code 2061 Date 2/8/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Jeanette W. McBride*

Exhibit C

IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry,)
)
 Plaintiff,)
)
 vs.)
)
 Allen University,)
)
 Defendant,)

ca# 2012-CP-40-04857

RECEIVED

JUN 19 2013

SC Court of Appeals

BEAUFORT W. MORRIS
C.C.P. & G.S.

2012 SEP 11 AM 9:33

FILED

PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

In support of Plaintiff's Motion For Summary Judgment the Plaintiff states the following facts:

1. On August 10, 2012 Plaintiff filed an Amended Complaint dropping Libel, Silent Fraud, and Constructive Fraud as causes of actions leaving only Negligence and Intentional Infliction Of Emotional Distress so not to waste the Court's time.
2. Plaintiff continues to suffer irreparable injury in the form of **lost reputation**, lost opportunities, and goodwill everyday that the false and misleading statements remain on Plaintiff's student records.
3. The Defendant recently stated on page 3 line 8 of their Motion To Dismiss that, "**When this mistake was discovered, his transcript was corrected...**" That statement shows acceptance of one occasion of gross negligence and attempted fix.
4. **Cornell Law defines Negligence** as: "A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct)." Allen University admitted, Exhibit B attached to Complaint, that the previous staff was Negligent in handling my student records. After admitting that material fact the Defendant still intentionally refused to help correct the previous staffs' misconducts.

5. **Definition from Nolo's Plain-English Law Dictionary:** "Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Negligence forms a common basis for civil litigation, with plaintiffs suing for damages based on a variety of injuries, from physical or property damage to business errors and miscalculations." The Defendant admitted, exhibit B attached to Complaint, they made business errors and miscalculations in regards to my educational background.
6. Plaintiff served Request For Admissions on 7/30/2012. The Defendant has failed to respond (Exhibit D attached) and pursuant SCCRP 36 all request are deemed admitted. Some of the admitted requests are as follows:

#6. Admit that You were negligent in handling the Plaintiff's student records.

#7. Admit that You were negligent either presently or in the past with handling some students' transcripts.

#8. Admit that You made an error with handling the Plaintiff's 2007 transcript.

#12. Admit that You have been negligent in handling financial aid money within the past 12 years.

#15. Admit that You have known that Your previous staff were not keeping accurate records.

#18. Admit that You have known that Your Business Office was negligent in handling financial aid money.

#19. Admit that by not disclosing the fact You have known of false grades being published on transcripts, You committed fraud.

#20. Admit that for some unknown reason false grades were being published on the Plaintiff's 2007 transcript.

#21. Admit that the Plaintiff's reputation was harmed because of the error on his 2007 transcript made by You in a reasonably foreseeable way.

#22. Admit that the error on the Plaintiff's transcript was a substantial factor in causing the Plaintiff's harm.

#23. Admit that every transcript prior to 2008 of the Plaintiff had false grades on them.

#24. Admit that You know the definition of Negligent and or Negligence.

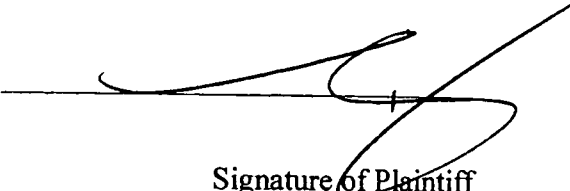
#25. Admit that You know the definition of Fraud.

7. Admittedly, the Defendant was Negligent.

I declare under penalty of perjury that the foregoing is true and correct.

September 11, 2012

Dated:


Signature of Plaintiff

Lawrence Terry, Pro Se



Richland County
Fifth Judicial Circuit
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Lawrence Terry vs Allen University

Case Number: 2012CP4004857
Case Type: Common Pleas
Status: Pending
Disposition:
Original Source Doc:
Judgment Number:

Court Agency: Richland County Common Pleas
Case Sub Type: Personal Injury 350
Assigned Judge:
Disposition Date:
Original Case #:

Filed Date: 07/16/2012
File Type: Non-Jury

Disposition Judge:

[Parties](#) | [Judgments](#) | [Actions](#) | [Associated Cases](#) | [Tax Map Information](#)

Actions

Name	Description	Action Type	Begin Date	Completion Date
Terry, Lawrence	Request/Request for Production of Documents	Filing	07/16/2012 - 11:11:06	
Terry, Lawrence	Request/Request for Admissions	Filing	07/16/2012 - 11:11:40	
Terry, Lawrence	Summons & Complaint	Filing	07/16/2012 - 16:02:55	
Terry, Lawrence	ADR/Alternative Dispute Resolution (Workflow)	Filing	07/16/2012 - 16:08:57	
Terry, Lawrence	Affidavit	Filing	07/16/2012 - 16:14:37	
Terry, Lawrence	Interrogatories	Filing	07/16/2012 - 16:15:03	
Terry, Lawrence	Amended Coversheet For Non Jury	Filing	07/18/2012 - 08:49:52	
Terry, Lawrence	Motion For An Expedited Non Jury Trial Date	Motion	07/20/2012 - 11:31:19	
Terry, Lawrence	Motion/Motion Filing Fee	Amount	07/20/2012 - 13:21:42	
Terry, Lawrence	Verification/Verified	Filing	07/26/2012 - 09:00:54	
Allen University	Motions to Show Cause, For Sanctions, and To Dismiss	Motion	07/31/2012 - 12:12:07	
Terry, Lawrence	Amended Complaint For Negligence and Intentional Infliction	Filing	08/10/2012 - 10:11:01	
Terry, Lawrence	Service/Affidavit Of Service on Allen University	Filing	08/10/2012 - 15:34:46	
Terry, Lawrence	Statement of Additional Facts For Motion For An Expedited No	Filing	08/17/2012 - 14:17:13	
Terry, Lawrence	Reply to Defendant's Motions to Show Cause, For Sanctions, a	Filing	08/17/2012 - 14:18:16	
Terry, Lawrence	Motion For Summary Judgment	Motion	08/27/2012 - 10:50:25	
Terry, Lawrence	Motion/Motion Filing Fee	Amount	08/27/2012 - 16:54:34	

Exhibit D

Exhibit D

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**IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY**

Lawrence Terry,
Plaintiff,
vs.
Allen University,
Defendant

Case No.: 2012-CP-40-04857

**PLAINTIFF'S BRIEF IN REPLY
TO DEFENDANT'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
RECONSIDERATION**

FILED
RICHLAND COUNTY
2012 OCT - 8 PM 1:23
KARLETTE W. ESCOBAR
C.C.P. & C.S.

Plaintiff, Lawrence Terry, files this Brief In Reply to Defendant's Memorandum In Opposition in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

There is not a standing Motion To Dismiss on the docket so I do not understand how or why the Defendant stated in their Memorandum In Opposition, "*For the reasons explained in Defendant's Motion to Dismiss, filed on August 27, 2012, and incorporated herein, Defendant opposes Plaintiff's Motion For Reconsideration.*" I have attached a copy of the docket which clearly shows the only document filed on August 27, 2012 was the Plaintiff's Motion For Summary Judgment. The Defendant did initially file a Motion To Dismiss on 7/31/2012 in response to my Original Complaint that was served to the Defendant on 7/30/2012 but the Plaintiff later filed an Amended Complaint on 8/10/2012 which the Defendant has failed to file ANY response to. The Plaintiff did file an Affidavit Of Default on 9/11/2012 and a Motion For Default Judgment, both also attached. The Defendant's negligence in failing to respond to the Plaintiff's Amended Complaint and Initial Discovery Requests is not a valid reason and is inexcusable. Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff. The Defendant is well represented by experienced legal counsel from one of the largest law firms in the United States of America.

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1 Where an attorney is merely neglectful, the general rule applies and relief from judgment is
2 unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the
3 attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d
4 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from
5 *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

6 Although a wide discretion is vested in courts to set aside or vacate judgments because of the
7 neglect, misconduct or inadvertence of counsel employed in the case, the general rule
8 undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake,
9 inadvertence or neglect attributable to the attorney can be successfully used as a ground for
10 relief, unless it would have been excusable if attributable to the client. The acts and omissions of
11 the attorney in such case are those of the client.

12 In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he
13 was involved in a multi-day trial. As a result of defense counsel's failure to answer the
14 complaint, the court entered a default judgment against defendant. On appeal, our supreme court
15 was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and
16 imputed the neglect of counsel to his client. The court explained:

17 [T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to
18 pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a
19 mistake such as the record here discloses is understandable; but it entails the penalty of default
20 under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords
21 no basis for reversal.

22 *Id.* at 550-51, 99 S.E.2d at 394.

23 CONCLUSION

24
25 If the Dismissal was based on an alleged Motion To Dismiss filed on 8/27/2012 then the
26 Dismissal is void because the docket clearly shows no such motion. The Court and the Plaintiff
27 base their decisions off of what is filed on the docket. If the Plaintiff did not file an Affidavit Of
28

1 Default and Motion For Default Judgment, as required by law, the Plaintiff could have had his
2 lawsuit dismissed for Failure To Prosecute. The Plaintiff Pro Se has followed the South Carolina
3 civil rules of procedures while the negligent actions of the Defendant's experienced legal counsel
4 have failed to abide by those rules. The Defendant received proper Notice of the Amended
5 Complaint, Requests For Admissions, and the Defendant has known for weeks that the docket
6 did not show any response to the Amended Complaint because the Plaintiff also attached a copy
7 of the docket to their Brief In Support Of Motion For Summary Judgment, but yet they still
8 failed to file any Motion to try to correct it. The Defendant has basically lost this case in multiple
9 ways including the fact that they failed to respond to the Amended Complaint, based on their
10 failure to respond to the requests for admissions negligence is admitted, and the overwhelming
11 evidence submitted by the Plaintiff clearly shows negligence on the part of the Defendant.
12 Therefore, Plaintiff also requests that the Court use its power to rule on the pending Motion For
13 Summary Judgment and/or the Motion For Default Judgment.
14
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17

18 For the reasons stated above Lawrence Terry, Plaintiff Pro Se, requests that the Court
19 reverses its previous Order To Dismiss, Rule on Plaintiff's pending Motions, and allow this case
20 to move forward.
21

22
23 Date 10/8/2012

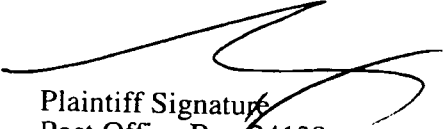
24 
25 Plaintiff Signature
26 Post Office Box 24138
27 Columbia, SC 29224
28 Lawrence Terry, Pro Se

Exhibit E

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9069
www.nelsonmullins.com

Debbie Whittle Durban
(Admitted in SC & NC)
Tel: 803.255.9465
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debbie.durban@nelsonmullins.com

June 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

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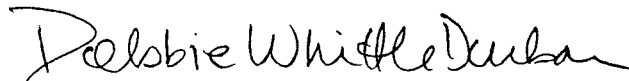
RE: Lawrence Terry v. Allen University
~~Civil Action No. 2010-CP-40-02301~~
Court of Appeals Tracking No.: 2013-000340
Our File No. 31667/01501

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find (1) the Initial Brief of Respondent, and (2) the Respondent's Designation of Matter to be Included in the Record on Appeal. By copy of this letter, copies of the documents have been served on Lawrence Terry, the Pro Se Appellant, and a Proof of Service is attached to each document. Please stamp the enclosed extra copies of the Initial Brief and the Designation of Matter with the time and date of filing and return them to me in the enclosed envelope.

Thank you for your attention to this matter.

Very truly yours,



Debbie Whittle Durban

DWD:pjolley
Enclosures

cc: Lawrence Terry (Plaintiff Pro Se)

Richland County Common Pleas
CASE HISTORY FOR CASE 2012CP4004857

Exhibit F

Lawrence Terry vs Allen University

FILED DATE: 7/16/2012

CASE TYPE: CP/Personal Injury 350

STATUS: Appeal

JUDGE:

CASE PARTIES:

Plaintiff Terry, Lawrence

Defendant Allen University

Plaintiff Pro Se Terry, Lawrence

P O Box 24138, Columbia, SC 29224

Defendant Attorney Durban, Debbie Whittle

PO Box 11070, Columbia, SC 29211

CASE HISTORY FOR CASE 2012CP4004857

Allen University

Age: Unknown
 DL#:

DOB: Unknown
 SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
7/31/2012	12:12 PM	Motions to Show Cause, For Sanctions, and To Dismiss
8/1/2012	12:00 AM	COCMORENO recorded the following Case Note: Certificate of Service
8/8/2012	3:06 PM	Motion For Protective Order
10/3/2012	12:12 PM	Filing recorded: Memorandum in Opposition to Plaintiff's Motion For Reconside
10/3/2012	12:00 AM	COCMORENO recorded the following Case Note: Memorandum in Opposition to Plaintiff's Motion For Reconsideration of Court's Order Dismissing Case, Certificate of Case
2/22/2013	12:00 AM	COCMORENO recorded the following Case Note: Certificate of Service

Print Date: 06/14/2013
 Print Time: 9:54:59AM
 Requested By: COCRYAN

Richland County Common Pleas
CASE HISTORY FOR CASE 2012CP4004857

Lawrence Terry vs Allen University

CASE TYPE: CP/Personal Injury 350

JUDGE:

STATUS: Appeal

FILED DATE: 7/16/2012

CASE PARTIES:

Plaintiff Terry, Lawrence

Defendant Allen University

Plaintiff Pro Se Terry, Lawrence
P O Box 24138, Columbia, SC 29224

Defendant Attorney Durban, Debbie Whittle
PO Box 11070, Columbia, SC 29211

CASE HISTORY FOR CASE 2012CP4004857

Terry, Lawrence

Age: Unknown
DL#:

DOB: Unknown
SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
7/16/2012	11:11 AM	Filing recorded: Request/Request for Production of Documents
7/16/2012	11:11 AM	Filing recorded: Request/Request for Admissions
7/16/2012	4:02 PM	Filing recorded: Summons & Complaint
7/16/2012	4:08 PM	Filing recorded: ADR/Alternative Dispute Resolution (Workflow)
7/16/2012	4:14 PM	Filing recorded: Affidavit
7/16/2012	4:15 PM	Filing recorded: Interrogatories
7/18/2012	8:49 AM	Filing recorded: Amended Coversheet For Non Jury
7/20/2012	11:31 AM	Motion For An Expedited Non Jury Trial Date
7/20/2012	1:21 PM	Motion/Motion Filing Fee
7/26/2012	9:00 AM	Filing recorded: Verification/Verified

Print Date: 06/14/2013
Print Time: 9:35:50AM
Requested By: COCTRIBBLE

CASE HISTORY FOR CASE 2012CP4004857

8/10/2012	10:11 AM	Filing recorded: Amended Complaint For Negligence and Intentional Infliction
8/10/2012	3:34 PM	Filing recorded: Service/Affidavit Of Service on Allen University
8/13/2012	12:00 AM	COCMORENO recorded the following Case Note: Amended Complaint For Negligence and Intentional Infliction of Emotional Distress
8/17/2012	2:17 PM	Filing recorded: Statement of Additional Facts For Motion For An Expedited No
8/17/2012	2:18 PM	Filing recorded: Reply to Defendant's Motions to Show Cause, For Sanctions, a
8/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Reply to Defendant's Motions to Show Cause, For Sanctions, and to Dismiss
8/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Statement of Additional Facts For Motion For An Expedited Non-Jury Trial Date
8/27/2012	10:50 AM	Motion For Summary Judgment
8/27/2012	4:54 PM	Motion/Motion Filing Fee
8/28/2012	11:25 AM	Filing recorded: Motion For Protective Order
8/28/2012	11:28 AM	Filing recorded: Renewed Motion to Show Cause, For Sanctions, and to Dismiss
9/11/2012	9:51 AM	Filing recorded: Brief in Support of Motion For Summary Judgment
9/11/2012	10:35 AM	Filing recorded: Affidavit of Default
9/14/2012	8:39 AM	Motion/Motion Filing Fee
9/14/2012	2:30 PM	Motion For Default Judgment
9/17/2012	12:00 AM	COCGUNTER recorded the following Case Note: Form Order This Casue of Action is DISMISSED with prejudice. Plaintiff May Appeal, but may not file another cause of action regarding this matter with this court.
9/17/2012	1:59 PM	Form Order This Casue of Action is DISMISSED with prejudice.
9/18/2012	8:43 AM	Motion/Motion Filing Fee
9/18/2012	9:34 AM	Motion For Reconsideration on Order to Dismiss
9/19/2012	11:36 AM	Filing recorded: Affidavit of Plaintiff
9/19/2012	11:37 AM	Filing recorded: Brief in Support of Motion For Reconsideration on Order to D
9/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Brief in Support of Motion For Reconsideration on Order to Dismiss
9/21/2012	12:00 AM	COCMORENO recorded the following Case Note: Memorandum of Law in Support of Motion For Reconsideration on Order to Dismiss
9/21/2012	9:37 AM	Filing recorded: Memorandum of Law in Support of Motion For Reconsideration o
9/24/2012	12:00 AM	COCMORENO recorded the following Case Note: Additional Statements of Fact in Support of Motion For Reconsideration on Order to Dismiss
9/24/2012	11:57 AM	Filing recorded: Additional Statements of Fact in Support of Motion For Recon
10/4/2012	12:00 AM	COCMORENO recorded the following Case Note: Reply to Defendant's Memorandum in Opposition of Plaintiff's Motion For Reconsideration
10/4/2012	2:38 PM	Filing recorded: Reply to Defendant's Memorandum in Opposition of Plaintiff's
10/8/2012	8:48 AM	Filing recorded: Brief In Reply To Defendant's Memorandum in Opposition to Pl
10/9/2012	12:00 AM	COCMORENO recorded the following Case Note: Brief In Reply To Defendant's Memorandum in Opposition to Plaintiff's Motion For Reconsideration
12/11/2012	12:00 AM	COCMORENO recorded the following Case Note: Additional Statements of Facts in Reply to Defendants Memorandum In Opposition of Plaintiff's Motion For Reconsideration
12/11/2012	4:41 PM	Filing recorded: Additional Statements of Facts in Reply to Defendants Memora
12/13/2012	10:06 AM	Filing recorded: Memorandum of Law in Support of Motion For Default Judgment
2/11/2013	10:44 AM	Form Order Plaintiff's motion for Reconsideration is DENIED.
2/19/2013	10:42 AM	Filing recorded: Notice of Appeal
2/22/2013	12:00 AM	COCGUNTER recorded the following Case Note: Renewed Motion to Show Cause, For Sanctions, and to Dismiss Plaintiff's Amended Complaint, Certificate of Service
2/22/2013	12:00 AM	COCGUNTER recorded the following Case Note: Renewed Motion to Show Cause, For Sanctions, and to Dismiss Plaintiff's Amended Complaint, Certificate of Service

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February 25, 2013

Ms. V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Lawrence Terry v. Allen University
Appellate Case No. 2013-000340

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FEB 26 2013

SC Court of Appeals

Dear Ms. Allen:

This letter is to notify you that I agree with the Appellant, Mr. Terry, that there is no reason to order a transcript in order to proceed in the above-referenced appeal. Because there was no hearing or other proceedings in this case below, there is no transcript available.

Please let me know if you have questions or if you need additional information.

With kind regards, I am

Very truly yours,



Debbie Whittle Durban

cc: Mr. Lawrence Terry

PROOF OF SERVICE OF REPLY BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.


Lawrence Terry,

Appellant.

PROOF OF SERVICE

I certify that I have served copies of the Reply Brief on Allen University by personally delivering the copies of it to his attorney of record, Debbie Whittle Durban, at her office at Post Office Box 11070 Columbia, South Carolina 29211, on June 19, 2013.

June 19, 2013


Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

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JUN 19 2013

SC Court of Appeals