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**APPELLANT'S MOTION TO STRIKE AND CLARIFICATION ON  
ORDER**

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

**RECEIVED**

AUG 15 2013

**SC Court of Appeals**

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

**APPELLANT'S MOTION TO STRIKE AND CLARIFICATION ON  
ORDER**

**ARGUMENT**

Based on the court's recent Order and the plain reading of the court's rules all or parts of the Respondent's Arguments should be stricken from the Record as insufficient, immaterial, redundant, impertinent, or even scandalous.

Argument I. Appellant had been enjoined from bringing this action. As the Appellant stated in APPELLANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS, the lower court's Order only stated two sentences with one instructing the Appellant to Appeal. No mention of being enjoined from bringing this action. As the Respondent made clear in their letter previously submitted to this Appeals Court, no hearing was held in the lower court plus the Respondent did not file ANY documents in response to the Appellant's discovery requests or

Amended Complaint. The Appeals Court's recent order validated this point. Based on that information the Respondent's first argument is immaterial.

Argument II. Appellant's claims of negligence and I.I.E.D. are barred by res judicata. Once again the lower court's order only stated two sentences with no mention of res judicata. With the order instructing the Appellant to appeal rather than stating the case was dismissed because of res judicata. Based on that information the Respondent's second argument is immaterial.

Argument III. The court appropriately dismissed the lawsuit because the Appellant failed to plead facts sufficient to state a cause of action. That argument is almost longer than the two sentences stated on the lower court's order. The lower court's order did not state this as being the reason for dismissal. The Respondent was in Default and the Appellant properly filed his Affidavit of Default prior to the Order of Dismissal. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct.App.1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party). Fact, the filed Affidavit of Default on 9/11/2012 was six days before the abrupt 9/17/2012 Order to Dismiss/due process violations. Based on that information the Respondent's third argument false and immaterial.

Argument IV. Appellant's due process rights were not violated. The Respondent made it clear that no hearing was held prior to the abrupt dismissal of this case so for them to now argue that the Appellant's due process rights were not violated would be contradictory. The Reply to Motions to Show Cause, for Sanctions, and to Dismiss the Appellant filed on August 17, 2012 was in response to the Respondent's initial motion. The Respondent did not file a reply to the Amended Complaint and therefore was in Default. Based on that information the Respondent's fourth argument is contradictory to their previous statements and immaterial.

Argument V. Allen was not in Default. Based on the multiple errors in handling this case Allen University was in Default. The Respondent claimed in their Initial Brief that they did indeed respond to the Amended Complaint. This Appeals Court's recent Order agreed with the Appellant's argument that nothing was filed by Allen University in response to the Amended Complaint. The Record on Appeal includes a copy of the Affidavit of Default properly filed by

Lawrence Terry, Pro Se. Based on that information and the court's recent Order the Respondent's fifth argument is immaterial and even scandalous.

### **COURT'S RECENT ORDER**

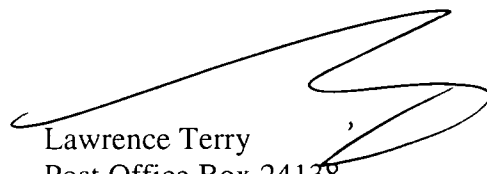
The Appellant understands the first half of the Appeals Court's recent Order but needs clarification on the second paragraph. Appellant understands that the court agreed the three Motions refiled in February 2013 were not present during the lower court's Order of Dismissal and denial of Motion for Reconsideration and therefore will not be considered by the Appeals Court. In the Appellant's Motion he also requested that the Appeals Court instruct the Circuit Court's Clerk of Court to refile those Motions in the previous cases they were in, so not to cause any confusion on the docket. The Appellant would be deeply prejudiced if those documents are allowed to remain they would void many documents the Appellant properly filed including the Affidavit of Default. When those Motions were refiled, without motion or court's order, no notice was given to the Appellant.

### **CONCLUSION**

As Allen University already stated to this court that no hearing was held and with the Appeals Court's recent Order corroborating with the Appellant's argument that Allen University did not file in anything in the instant case under appeal it is not plausible that the Respondent now has numerous arguments.

Therefore the Appellant respectfully requests this court strike from the record all or parts of Respondent's Arguments 1-5 and also instruct the Circuit Court's Clerk of Court to remove the altered motions from case file #2012-CP-40-04857.

August 15, 2013



Lawrence Terry  
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**PROOF OF SERVICE OF APPELLANT'S MOTION TO STRIKE AND  
CLARIFICATION ON ORDER**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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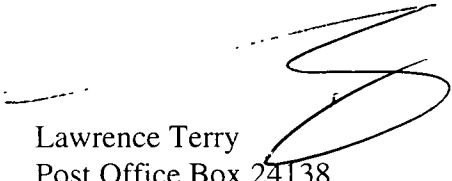
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**PROOF OF SERVICE**

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I certify that I have served copies of the Motion For APPELLANT'S MOTION TO STRIKE AND CLARIFICATION ON ORDER 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 August 15, 2013.

August 15, 2013

  
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