

**In
The State of South Carolina The Court of Appeals**

Case No. 2023-001733

Jian-Yun (John) Dong, M.D., Ph.D., Appellant
v.

The Medical University of South Carolina, Respondent

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Aug 25 2025

SC Court of Appeals

APPELLANT’S MOTION TO STRIKE FINAL RESPONSE BRIEF

Appellant John Dong, appearing pro se, respectfully moves this Court pursuant to Rule 267, SCACR, to strike the Final Brief filed by Respondent. This motion is grounded on the fact that Respondent’s brief fails to address the legal issues presented in Appellant’s Final Brief, in violation of Rule 211(b), SCACR, and further contains misrepresentations in violation of Rule 208(b)(1)(B) and Rule 213, SCACR. As such, the brief fails to meet the required standard for a responsive filing and should be struck or disregarded.

1. Legal Basis for Motion

Rule 267, SCACR, authorizes the appellate court to impose sanctions or grant relief where there is noncompliance with the appellate rules, including striking briefs that fail to comply.

Rule 211(b), SCACR, requires that briefs contain meaningful legal argument, proper citations, and references to the Record on Appeal. A respondent’s brief must directly address and rebut the arguments raised in the appellant’s brief. Failure to do

so deprives the appellant of a fair and reasoned response, undermines the adversarial process, and hinders the Court's ability to fully assess the issues.

Additionally, Rule 208(b)(1)(B), SCACR, requires accurate citations to the Record, and Rule 213, SCACR, authorizes sanctions where a filing contains misleading arguments or misrepresentations of the record.

2. Deficiency of Respondent's Final Brief

Respondent's Final Brief does not meaningfully respond to the specific issues raised in Appellant's brief. It fails to present legal analysis, authority, or accurate record citations in opposition to Appellant's preserved issues. Instead, it offers general denials and recitations of procedural history without addressing the substance of Appellant's arguments.

For example, Appellant raised two central issues:

- I. Whether the district court erred in granting Respondent's motion for summary judgment where genuine issues of material fact existed and Respondent failed to meet its burden of proof.
- II. Whether the district court violated Appellant's due process rights by severely restricting discovery and granting summary judgment before Appellant could depose a single witness.

Rather than respond to these arguments, Respondent's brief raised unrelated issues, including an unfounded claim that the notice of appeal was untimely. That assertion is both incorrect and irrelevant, as the statute dictates that the tolling period

begins after entry of the final order, which is the order denying Appellant's Motion for Amendment of Summary Judgment. Therefore, this argument is unresponsive to Appellant's brief and legally incorrect.

The remainder of the Respondent's non-responsive arguments include that: (1) Appellant's Complaint was time-barred because "it is [Appellant's] contention that the breach of the contract occurred before the Agreement expired," and (2) that "Appellant cannot prove that the contract was violated." These arguments are not only non-responsive to the preserved issues but are also fundamentally flawed. They are based on incorrect legal theory, misrepresentations of fact, and are unsupported by the record. Therefore, the Respondent's Final Brief provides no substantive response to the issues properly before this Court.

Specifically, in the Respondent's Argument (1), the legal theory is flawed. The violation of the Agreement was not complete until the terms were not honored within the specified period. Even if the terms were breached before the Agreement expired, the law requires a plaintiff to exhaust all administrative means to resolve the dispute before bringing a lawsuit. What is more concerning is that this argument is based on a misrepresentation of fact; the Appellant never made such an assertion or statement. This misrepresentation violates Rule 208(b)(1)(B), SCACR, which requires accurate references to the Record.

Respondent's Argument (2) is also non-responsive, legally flawed, and is based on misrepresentations of fact.

The law is clear, under Rule 56(c), SCRPC:

“The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. All ambiguities, conclusions, and inferences arising from the evidence must be construed against the moving party.”
Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537 (1991).

Respondent's Brief does not cite any evidence in the record to argue for the lack of genuine issues of material fact and does not respond to the Appellant's arguments. Instead, Respondent attempts to shift its burden as the summary judgment movant onto Appellant.

Most concerning, Respondent misrepresented facts by presenting a false version of the contract with fabricated terms in order to claim that Appellant could not prove the terms were violated. This misrepresentation is willful because the fraudulent “terms” completely avoid the major clauses of the Agreement: (1) to timely return Dr. Dong's Research assets that had been illegally taken by the Chairman of the Department of Microbiology and Immunology; (2) transfer Dr. Dong's assets to a new location for Dr. Dong to continue research; and (3) provide additional lab space and resources on campus to support Dr. Dong's work.

This fabrication of evidence is easily identifiable by comparing the “terms of the Agreement” presented in the Response Brief with the original Agreement included in Appellant’s Complaint.

These misrepresentations violate Rule 208(b)(1)(B) and Rule 213, SCACR. Together, these rules mandate accurate representation of the facts, prohibit “frivolous, misleading, or improper arguments.” The Response Brief’s misrepresentation and unsupported factual assertions violate these provisions and warrant striking or disregarding the offending portions of a brief.

3. Authority and Precedent

South Carolina courts have consistently held that failure to address issues on appeal constitutes waiver or concession.

In *State v. Porter*, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010), the Court held: “Where a respondent fails to address an issue raised in the appellant’s brief, the respondent is deemed to have conceded the issue.”

Similarly, in *Hickman v. Hickman*, 301 S.C. 455, 457, 392 S.E.2d 481, 482 (Ct. App. 1990), the Court emphasized: “Failure to respond to the arguments raised in the appellant’s brief may be treated as abandonment of any contrary position.”

Respondent’s complete failure to respond to Appellant’s issues therefore justifies striking its brief or, at a minimum, disregarding it in adjudicating the appeal.

4. Relief Requested

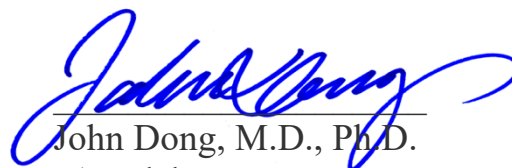
Appellant respectfully requests that the Court:

1. Strike Respondent's Final Brief as noncompliant under Rules 267, 211(b), and 208(b)(1)(B), SCACR.
2. Alternatively, disregard Respondent's Final Brief in its entirety for failure to respond to Appellant's preserved issues and treat those issues as conceded.
3. Impose sanctions, as appropriate, under Rule 213, SCACR, for Respondent's misrepresentation of facts in the Record.
4. Grant such other and further relief as the Court deems just and proper.

CONCLUSION

Respondent's failure to engage with the preserved issues raised in Appellant's Final Brief undermines the fairness of the appellate process and violates the SCACR. The brief provides no meaningful assistance to the Court and prejudices Appellant's right to a reasoned response. Accordingly, Appellant respectfully urges this Court to strike or disregard Respondent's Final Brief in its entirety.

Respectfully submitted, pro se,



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SC Court of Appeals

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jean Toal,
District Court Judge

Case No. 2023-001733

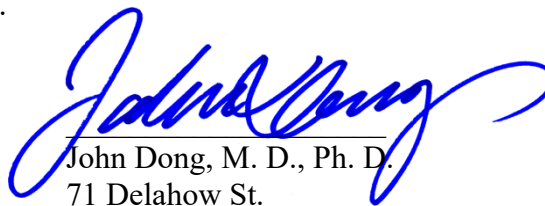
The Medical University of South Carolina, Respondent,

v.

Jian-Yun (John) Dong, M.D., Ph.D. Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Strike Respondent Final Response Brief by electronic mail to bconley@clevelandlaborlaw.com and by depositing a copy of it in the United States Mail, postage prepaid, on August 24, 2025, addressed to the Respondent's attorney on record, Bob J. Conley, Esq., Cleveland & Conley LLC, 171 Church Street, Suite 310, Charleston, South Carolina 29401.



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**In
The State of South Carolina The Court of
Appeals**

The Honorable Jenny Abbott Kitchings
Clerk,

The Honorable Catherine S. Harrison
Chief Deputy Clerk

Post Office Box 11629 Columbia, South
Carolina 29211

August 24, 2025

RE: John Dong, M.D., Ph.D., v. The Medical University of South Carolina,
Appellate Case No. 2023-001733

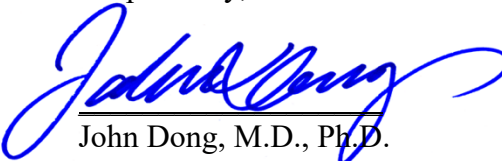
Dear Honorable Clerk:

I would like to submit, as enclosed, the Appellant's Motion to Strike Respondent's Final Response Brief and the Proof of Service for filing with the Court.

A fifty-dollar filing fee will be mailed to the Court via USPS.

Thank you for the assistance.

Respectfully,



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