

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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Nov 06 2020

SC Court of Appeals

**APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas**

Edgar W. Dickson, Circuit Court Judge, First Judicial Circuit

Case No. 2020-0006713

South Carolina State University,..... Respondent,

v.

Denise Simmons..... Appellant.

REPLY TO APPELLANT'S MOTION TO SETTLE RECORD

HALLIGAN MAHONEY WILLIAMS
SMITH FAWLEY & REAGLE, PA

Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com

Kimberly Kelley Blackburn,
S.C. Bar No. 73699
kblackburn@hmwlegal.com

John M. Reagle, S.C. Bar No. 14185
jreagle@hmwlegal.com
P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Respondent

Respondent, South Carolina State University, hereby replies to the Motion for an Order to Settle Record and Stay Appellate Proceedings filed on October 27, 2020, by Appellant Denise Simmons, Ph.D. By way of her motion, Dr. Simmons seeks to have this Court issue an order to settle the record on appeal and issue a stay in the proceedings in this appeal until such time as the record is settled.

As an initial matter, Appellant's request for a stay is premature, because her counsel timely filed Reply Brief of Appellant on November 2, 2020, and consistent with Rule 210, SCACR, the Record must be filed by December 2, 2020. While Respondent does not object to an extension of time in which to allow the parties to try to agree on the Record, seeking intervention from the Court to settle the record is not appropriate at this time. Respondent provides the following in opposition of Appellant's motion to settle the record in this matter.

1. Both Appellant and Respondent cite trial exhibits in their designations of matter.
2. Respondent's counsel was not copied on Appellant's request for copies of trial exhibits on August 6, 2020, and was not aware of the request until October 25, 2020, when Appellant's counsel notified her by email. Respondent's counsel did not receive a copy of the documents provided to Appellant's counsel by the Clerk's office responsive to the request for trial exhibits until October 27, 2020. *See* Exh. A, E-mails between Blackburn and High.

3. With regard to Appellant's contention that Appellant's counsel reached out to Respondent's counsel requesting that Respondent provide their trial documents to settle the record, and that Respondent's counsel "has not responded to that request," this is not accurate. *See* Appellant's Motion to Settle Record ¶ 19. Appellant's counsel first notified Respondent's counsel that he did not have access to trial exhibits, as well as other items, on the afternoon of Thursday, October 22, 2020. Respondent's counsel was participating in a two-day administrative hearing, but engaged in communications with Appellant's counsel regarding exhibits as soon as feasible starting on Saturday, October 24, 2020, to provide requested items on hand, and to seek clarification regarding Appellant's request. *See* Exh. A. After several email exchanges, Respondent's counsel notified Appellant's counsel that she also did not have exhibits on site, and that she would review files stored off-site in order to determine if Respondent could provide the trial exhibits to Appellant's counsel. Appellant's counsel then immediately thereafter filed this motion within 5 days of first notifying Respondent's counsel that he did not have all trial exhibits, and even though Appellant's counsel agreed to inspect their files.

4. Contrary to Appellant's assertion that Appellant "can find no reference that Plaintiff's Trial Exhibit 11 was entered into evidence," pages 68-69 of what Appellant's counsel has designated as Volume II of the trial transcript, or as Exhibit 5 to the Motion to Settle the Record, show that

Plaintiff's Trial Exhibit 11 was entered into evidence, and Dr. Simmons' attorney did not object. Respondent's counsel notified Appellant's counsel of the reference to Exhibit 11 in the transcript by email on October 27, 2020, prior to the filing of the Motion to Settle the Record. *See* Exh. B, transcript pages; Exh. A.

5. Respondent's counsel is in the process of reviewing the transcript and related documents to provide Appellant's counsel documents that constitute the trial exhibits referenced in both parties' designation of record. The trial transcript, as Exhibits 4 (Volume I) and 5 (Volume II) of Appellant's Motion to Settle the Record, describe the trial exhibits in detail. *See* Exh. 4, 5 to Appellant's Motion to Settle Record.

Respondent therefore believes a stay and order to settle the record is premature and not appropriate because the parties have sufficient time to try to agree to the Record on Appeal without intervention from the Court and certainly without need for remand to the trial court. If appropriate at the end of the timeline for submission of the Record the parties are unable to agree to the Record, the parties may then seek the Court's intervention pursuant to Rule 212, SCACR, or other proper procedure.

[Signature on following page]

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA

By: s/Kimberly Kelley Blackburn
Dwayne T. Mazyck, S.C. Bar No. 70240
dmazyck@hmwlegal.com

Kimberly Kelley Blackburn,
S.C. Bar No. 73699
kblackburn@hmwlegal.com

John M. Reagle, S.C. Bar No. 14185
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P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Respondent

Exhibit A

From: [Martin S. High](#)
To: [Kimberly Kelley Blackburn](#)
Cc: [John M. Reagle](#); [Dwayne T. Mazyck](#)
Subject: RE: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671
Date: Tuesday, October 27, 2020 4:32:04 PM
Attachments: [2015CP3800553-B.pdf](#)
[2015CP3800553-A.pdf](#)

Ms. Blackburn,

Attached are the documents that I received from the Orangeburg Ct. Clerk. As you will see, Exhibits 1 and 2 are misidentified (they do not correspond to the testimony describing the exhibits in the transcript) and none of the remaining exhibits are identified or included. This is all the clerk has on file. Mr. Ormond has no exhibits. The Court reporter has no exhibits. We have asked you for help given that you identified the documents in your DOM. Did you not have these documents in front of you when you wrote your brief and the DOM? The Appellant has done everything possible to locate these exhibits.

Given the lack of time, that you cannot provide the exhibits, and that we have our reply brief due on Monday, I will be filing a motion to settle and stay proceedings shortly. The steps that we went through to locate the exhibits are documented therein with great detail.

As far as Ex. 11, if you can locate in the transcript where that exhibit "and was presented to the trial court during trial." I cannot find any mention of a motion to enter that exhibit. It is likely I will not object to including that in the record, but it does not appear to have been proffered or admitted.

Thank you for reminding me that we have the burden to develop the record. I understand that. But I cannot include exhibits that are not in the Orangeburg Ct. Clerk files or available from any other source, except for your files apparently.

Marty

From: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>
Sent: Tuesday, October 27, 2020 4:16 PM
To: Martin S. High <marty@martyhigh.com>
Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>
Subject: RE: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671

Dr. High,

In your email on Sunday, you stated that "the exhibits that I received from the court clerk did not identify the documents by number." We did not receive any of these documents with the transcript you sent us. For clarification, are you saying that you received exhibits but they were just not marked/ identified? Please provide me with copies of the documents you received from the court clerk, and I will review them.

I certainly am happy to review our files for copies of the trial exhibits that we may have, but we do not keep these records on-site. I have called those records back to our office and should receive them in the next couple of days. I am hoping that I can let you know if we have them by the end of the week. However, if you have not received the exhibits, even unmarked, from the court reporter, it seems you should reach out to the court reporter(s) who transcribed the trial testimony. As you indicated in your email, the transcript is clear that we offered several exhibits into evidence which were accepted into evidence by the Court. It is possible that the court reporter just inadvertently failed to provide copies of the exhibits.

In regard to exhibit 11, Rule 210(c), SCACR provides that “the Record on Appeal shall include all matter designated to be included by any party under Rule 209...” Exhibit 11 was listed in Respondent’s Designation of Matter and was presented to the trial court during trial. I am not sure what your objection is to its inclusion. It appears to be Dr. Simmons’ C.V., and it was moved into evidence later in the trial with no objection by Dr. Simmons’ counsel (see pp. 68-70 of the trial transcript). It is properly before the court at this time and must be included in the Record on Appeal. See Rule 210(c), SCACR.

We want to be cooperative and helpful to move things along, but the burden is on your client to contact the court reporter and obtain copies of the entire transcript including all exhibits. See Rule 207, SCACR; *Bouchelle Incorporated v. Canopus US Insurance, Inc.*, 2019 WL 3946084 (quoting *Bonaparte v. Floyd*, 291 S.C. 427, 444, 354 S.E.2d 40, 50 (Ct. App. 1987) (stating the appellant “had the burden of furnishing a sufficient record for this [c]ourt’s review”). As I indicated, I will review our file the moment we receive it from storage, which should be Thursday.

Thank you.

Kim

From: Martin S. High <marty@martyhigh.com>

Sent: Sunday, October 25, 2020 11:53 AM

To: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>

Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>

Subject: RE: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671

You are correct, Dr. Simmons is responsible for requesting the transcript and assembling the record. I have obtained the full transcript, and you have received a copy.

However, the transcript contained no exhibits and only referenced P. Ex. 11 as being entered, even though it does not appear that there was motion during testimony for that document to be entered. See attached. However, the transcript identifies Plaintiff's Trial Exhibits 3, 5, 7-10, 12 as being

entered by the Court during the relevant testimony, but oddly not Ex. 11. Unfortunately, the exhibits that I received from the court clerk did not identify the documents by number. I assume that that the record was not properly identified by the court clerk, not properly identified by the now retired reporter at trial, and could not properly recorded by Reporter Green who finalized the transcript from the tape.

I cannot assemble a record if I don't have access to the properly identified documents. Now, I believe I have all the elements for the record except for copies of Plaintiff's Trial Exhibits 3, 5, 7-12. I am willing to proceed with assembling the record if I receive these exhibits from you, given that they correspond to the exhibits referenced in the transcript. I reserve the right to object to including Ex. 11 in the record as it does not appear it was entered at any point during testimony.

If I do not receive P's Ex 3, 5, 7-12 from you, I have no alternative but to file a motion to settle so I can get the documents for the record. I'd rather not delay the appeal for that. Again, I will file the motion if I do not have these documents in hand by COB Tuesday.

Let me know if this clarifies the issues.

Regards,

Marty

-----Original Message-----

From: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>

Sent: Sunday, October 25, 2020 11:17 AM

To: Martin S. High <marty@martyhigh.com>

Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>

Subject: Re: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671

Dr. High,

Thank you for your email. My understanding is that you as appellant are responsible for obtaining the full trial transcript which should include the exhibits. However, I will look into this on Monday and follow up with you.

Thank you.

Kim Blackburn

Sent from my iPhone

> On Oct 25, 2020, at 10:21 AM, Martin S. High <marty@martyhigh.com> wrote:

>

> Ms. Blackburn,

>

> Thank you for your two emails from yesterday. I am in receipt of the Plaintiff's proposed jury instructions. However, the document you sent via the link below is "Plaintiff's Supplement To Its Memorandum of Law In Support of Motion For Summary Judgment," not the original MOL. As this Supplement to MOL was not included in your Designation of Matter, it will not be included in the record. However, I did find a copy of Plaintiff's "Plaintiff's Memorandum of Law in Support of Summary Judgment" which will be included per your DOM.

>

> I still require the "Plaintiff's Trial Exhibits 3, 5, 7-12" that you indicated in your DOM. Again, these documents were not included in the record that I received from the clerk. if I do not receive these by close of business on Tuesday, Oct. 27, I will file a motion to settle.

>

> Regards,

>

> Marty

>

> -----Original Message-----

> From: Kimberly Kelley Blackburn <kblackburn@hmwlegal.com>

> Sent: Saturday, October 24, 2020 3:13 PM

> To: Martin S. High <marty@martyhigh.com>

> Cc: John M. Reagle <jreagle@hmwlegal.com>; Dwayne T. Mazyck <dmazyck@hmwlegal.com>

> Subject: APPEAL - South Carolina State University v. Denise Simmons, Appellate Case No. 2020-000671

>

> Dr. High,

>

> Please see the link below for the MOL in Support of Summary Judgment.

>

> Kim Blackburn

>

>

> You can view "817867.pdf" at:

> <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3dc75f29-9b58-4e43-bbb3-5efcb227e717>

>

> _____

> Sent with Adobe Document Cloud. Click on the link above to access the file online. No sign up or installation of Acrobat is required to access.

>

Exhibit B

1 MR. REAGLE: Thank you, Your Honor.

2 THE COURT: All right. Mr., Mr. Ormond, I know you
3 want to renew your motion for me to dismiss the --
4 MR. ORMOND: Breach of contract.

5 THE COURT: -- breach of contract with fraudulent
6 intent?

7 MR. ORMOND: Yes, sir.

8 THE COURT: I'm, I'm not gonna do that. I'm probably
9 less inclined to do that now then I was then.

10 Okay. So, but I'll, I'll note your objection to my
11 rulings.

12 Any other motions that you want to -- anything else you
13 need to put on the record?

14 MR. ORMOND: No, Your Honor.

15 THE COURT: Okay. Now, how, how much longer -- how
16 long do y'all need before y'all can be ready to go?
17 Are y'all ready to go now --

18 MR. REAGLE: We're ready to go.

19 THE COURT: -- for closing?
20 okay. Before you do that, look at the verdict form.
21 I'll give you a moment.

22 MR. REAGLE: Can't we just get the---

23 THE COURT: And, Mr. Ormond, I didn't mean to get you
24 to do that right as you were pouring water, but this is,
25 this is -- if y'all want to make any changes on it, I can.

1 MR. REAGLE: Your Honor, I did not move 13 into
2 evidence, and I really don't want it in evidence. I mean I
3 don't -- Mr. Ormond, I don't think they need to be reading
4 the evidence.

5 (Pause.)

6 THE COURT: All right. Did y'all say y'all needed a
7 few minutes or --?

8 MR. REAGLE: I think we just need to get the exhibits
9 organized.

10 THE COURT: Okay. All right. I'll give y'all an
11 opportunity to do that. I'll be right back.

12 Okay?

13 MR. REAGLE: Thank you.

14 (WHEREUPON, a short recess was taken at this time.)

15 MR. REAGLE: I have one housekeeping matter, Your
16 Honor. There's a question of whether we moved to admit
17 Exhibit 11, a CV, into evidence, and we would---

18 THE COURT: Plaintiff's 11?

19 MR. REAGLE: Yes, I'd request to do that at this time.

20 THE COURT: So, I mean is it -- is there any, any
21 objection?

22 MR. ORMOND: Oh, no.

23 THE COURT: Okay. Well, then 11 is in. I did not have
24 it marked as going in. It's in without objection. I'm sure
25 the jury is gonna remember that.

1 (WHEREUPON, Plaintiff's Exhibit No. 11 was received
2 into evidence at this time.)

3 THE COURT: All right. I thank y'all for going through
4 the charge, first of all. I had -- I made those copies.

5 MR. REAGLE: Can I get the---

6 THE COURT: And I got together -- and y'all gave me
7 three others --

8 MR. REAGLE: Yeah.

9 THE COURT: -- which I agree.

10 Okay?

11 MR. REAGLE: Thank you, Your Honor.

12 THE COURT: Y'all ready?

13 MR. REAGLE: Yes, Your Honor.

14 THE COURT: You ready?

15 (WHEREUPON, there was no audible response.)

16 THE COURT: All right. Bring them in.

17 THE BAILIFF: Yes, Your Honor.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. We're now getting ready to go
21 to the final part of this. We had the closing arguments of
22 the attorneys. I've got -- they have completed the
23 closings. I'm gonna give you the charges, and then we'll go
24 forward from there.

25 okay. All right. Mr. Reagle.

Exhibit 3

Subject: Please Call Me

Date: Thursday, August 23, 2012 10:07:19 AM ET

From: Darby, Debra A.

To: Simmons, Denise R

CC: Echols, Erica L

Good morning Dr. Simmons,
Please give me a call today.

Thanks much and have a good one!!!

Darby

Debra A. Darby

Administrative Coordinator

Office of the Vice President for Academic Affairs

South Carolina State University

Post Office Box 7307

Ko W.G. Donma Administration Bulding, Suite 210

Orangeburg, South Carolina 29117

Phone: 803-536-7180

Fax: 803-533-3775

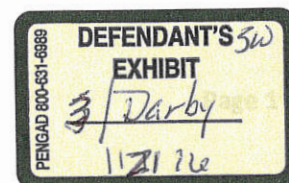


Exhibit 5

Saturday, February 23, 2013 6:20:42 PM ET

Subject: RE: Fall 2012 Teacher Schedule and Textbook Form

Date: Wednesday, April 11, 2012 10:37:38 AM ET

From: Okafor, Kenneth C

To: Simmons, Denise R

Ms. Simmons,

How are you doing? I hope fine. I saw your email and I wanted to call you but could not reach you on your campus phone (number provided). Regarding your question, it may not be possible to exchange that course for another since the courses were share between you and two other professors (Drs. Eliadorani and Chen) in the program. Unless you can arrange privately with one of them to make the exchange. If you have any further questions, please let me know. Thanks.

From: Simmons, Denise R

Sent: Monday, April 09, 2012 5:58 PM

To: Okafor, Kenneth C

Subject: FW: Fall 2012 Teacher Schedule and Textbook Form

Hi Dr. Okafor. I had a quick question/concern about one course appearing on my fall schedule: plane surveying. I have no experience in the course ... not even the instruments. However, I have loads of experience elsewhere. I do have experience with the codes and contracts course and even engineering econ. I can teach the waste water course. Can you make a change in the schedule?

Regards,

Denise

Denise R. Simmons, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859

Visit our Website: <http://www.cnrt.scsu.edu/fieldstation/index.html>

Join us on Facebook: Environmental Sciences Field Station

Follow us on Twitter: @SRESFS

From: "Guinyard, Janice" <jguinyard@scsu.edu>

Date: Mon, 9 Apr 2012 14:43:18 -0400

To: "Denise R. Simmons" <derant@scsu.edu>

Subject: RE: Fall 2012 Teacher Schedule and Textbook Form

Good Afternoon Dr. Simmons,

I hope you and your family are doing well these days ☺. I asked Erica about you frequently. Attached is your Fall schedule, please review, print and sign and return to me along with your Textbook Request Forms. If you have any questions regarding your schedule, feel free to contact Dr. Kenneth Okafor (536-



4758) or Dr. Stanley Ihekweazu (536-8860). Looking forward to seeing you in the August.

Thank you,

Janice Guinyard, Administrative Specialist II

Department of Civil and Mechanical Engineering Technology

South Carolina State University

300 College Street

Orangeburg, SC 29117

803 536-7117

803 516-4516-Fax

TEACHER SCHEDULE

Semester Fall 2012 Date 4/6/12 Full-Time X Adjunct _____

Name of Instructor Dr. Denise Simmons SS# 9000
 Title _____

Course No.	Title	Time	Day	Room	Credit Hours	Class Hours	Converted Hours	Course Type ¹	Previous Enrollment
CET 311-01	Plane Surveying	3:30pm-5:00pm	TR	LL 101	3	3	3	LEC	
CET 459-01	Senior Project Proposal	6:00pm-6:50pm	MW	HC 108	3	3	3	LEC	
ET 250-01	Technical Communications	9:30am-10:50am	TR	HC 208	3	3	3	LEC	

Subtotal _____ 9 9 9 _____

Overload ___ Dual Employment ___ {NOTE: The University is not obligated to pay overload or dual employment until approved by the Vice President for Finance and Management Information Systems.}

Subtotal _____

Release Time: Credit Hours/Percentage: 25% If external funding, include grant number _____

Responsibilities: **Project Director – Environmental Sciences Field Station**

Total: _____

Reviewed by: _____ Instructor _____ Date _____ Approved by: _____ Chairperson _____ Date _____ Dean _____ Date _____ Dean, School of Graduate Studies (If graduate courses) _____ Date _____ Associate Vice President _____ Date _____	Office Location <u>HC 201B</u> Office Phone <u>64631</u> e-mail: <u>dchen@scsu.edu</u> Office Hours <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>Monday</th> <th>Tuesday</th> <th>Wednesday</th> <th>Thursday</th> <th>Friday</th> <th>Saturday</th> <th>Sunday</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday																																			
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday																																					

NOTE: ALL SCSU courses taught by a faculty member, regardless of the teaching methodology, location, or funding source, must be included on this form.

¹ One of these Course Types: PR- Practicum, LB- Lab, LC- Lecture, AP- Applied Performance, D- Dissertation, I- Internship, PT- Practice Teaching, CL- Clinical, S- Seminar, TH- Thesis

Exhibit 7

PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859

Visit our Website: <http://www.cnri.scsu.edu/fieldstation/index.html>

Join us on Facebook: Environmental Sciences Field Station

Follow us on Twitter: @SRESFS

From: <Simmons>, "Denise R. Simmons" <dgrant@scsu.edu>

Date: Thursday, August 23, 2012 11:12 AM

To: "Okafor, Kenneth C" <kokafor@scsu.edu>

Subject: Re: From Dr. Denise R. Simmons

Hi Dr. Okafor, I left you a phone message. My cell phone number has not changed (same as is on record with the department); 803-606-8900. Ms Darby and I spoke this morning. She has a time related issue that needs to be resolved today and she needs to hear from you. We need to speak regarding employment.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859

Visit our Website: <http://www.cnri.scsu.edu/fieldstation/index.html>

Join us on Facebook: Environmental Sciences Field Station

Follow us on Twitter: @SRESFS

From: <Okafor>, Kenneth C <kokafor@scsu.edu>

Date: Friday, August 17, 2012 1:52 PM

To: "Denise R. Simmons" <dgrant@scsu.edu>

Subject: RE: From Dr. Denise R Simmons

Dr. Simmons,

Thanks for your email. I hope your Summer went well. Based on your email, there is no viable number to call you at, since the number there is a school number and you have not been here for a while. I had also contacted you for our Semester Departmental meeting. Or did you not get the email? If possible, can call me at 803-474-3634 so we can discuss. By the way, a lot of people have not yet received their "contracts" so that should not discourage you. Thanks.

From: Simmons, Denise R
Sent: Thursday, August 16, 2012 4:53 PM
To: Okafor, Kenneth C
Subject: From Dr. Denise R Simmons

Dr. Okafor:

I hope that you had a productive summer. I have not received an employment contract to date and have not otherwise heard from you or your office. I am a bit distressed, but have sought and secured employment. Please call me if you'd like to discuss the matter further.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859

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Join us on Facebook: Environmental Sciences Field Station

Follow us on Twitter: @SRESFS

Exhibit 8

Saturday, February 23, 2013 6:18:10 PM ET

Subject: Re: RETURN TO SCSU
Date: Thursday, August 23, 2012 9:05:40 PM ET
From: Simmons, Denise R
To: Ihekweazu, Stanley N.
CC: Okáfor, Kenneth C, Guinyard, Janice
Priority: High

Hello Dr Stanley:

I believed you have not been accurately informed. I have received so far one email last week from Dr Okafor and phone calls today from Dr Okafor. I have responded to both. Debra Darby has also called leaving a message yesterday and we spoke early AM today. Please let me know if I have missed something else.

Regards,
Denise

Denise R. Simmons, PhD, PE, PMP, LEED-AP
Assistant Professor, Civil Engineering Technology
Interim Director
Environmental Sciences Field Station
SC State University
PO Box 8143
300 College Street, NE
Orangeburg, SC 29117-0001
803-536-8859

Visit our Website: <http://www.cort.scsu.edu/fieldstation/index.html>

Join us on Facebook: Environmental Sciences Field Station

Follow us on Twitter: @SRESFS

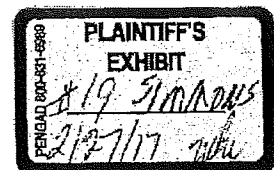
From: <Ihekweazu>, "Stanley N." <sihekwea@scsu.edu>
Date: Thursday, August 23, 2012 1:36 PM
To: "Denise R. Simmons" <dgrant@scsu.edu>
Cc: "Okáfor, Kenneth C" <kokafor@scsu.edu>, "Guinyard, Janice" <jguinyard@scsu.edu>
Subject: RETURN TO SCSU

Hello Denise:

I have been informed that you have not reported to SC State since the beginning of the semester. According to our teaching schedule, you were assigned three courses. I need you to return to SC State while the University addresses your concerns about your letter of employment. Any delay in your returning to Classes will not bode well with our students. Please do not forget that you owe an obligation to the University and we need your services.

Thank you.

Stanley N. Ihekweazu



Page 1 of 1

SIMMONS 000014

Exhibit 11

DENISE R. SIMMONS, PhD, PE, PMP, LEED-AP

EDUCATION:

- Ph.D. Civil Engineering**, 2012 – Clemson University, Clemson, SC
Dissertation title: First Generation College Students In Engineering: A Grounded Theory Study Of Family Influence On Academic Decision Making
- Graduate certificate in engineering education**, 2010 – Clemson University, Clemson, SC
- PhD-level coursework in Environmental Engineering** – 24 hours; University of South Carolina, Columbia, SC (2005-2007). *Focus: sustainability in the built environment*
- M.S. Civil Engineering**, 1995 – Clemson University, Clemson, SC
Thesis title: Development of Engineering & Construction Project Management Guidelines
- B.S. Civil Engineering**, 1990 – Clemson University, Clemson, SC

PROFESSIONAL EXPERIENCE:

- 2012-Present: Postdoctoral Associate, Virginia Tech, Department of Engineering Education, NSF Collaborative Proposal: Developing Engineer of 2020 Traits: How do Non-curricular Activities Impact African American Students?
- 2008-2012: Graduate Research Assistant, Clemson University, Department of Engineering and Science Education
- 2007-2012: Director, Savannah River Environmental Sciences Field Station, SC State University, Orangeburg, SC
- 2004-2008: Assistant Professor, Civil Engineering Technology, SC State
- 2004-2005: Academic Program Coordinator for Civil Engineering Technology, SC State
- 2003-2008: Faculty Practitioner, University of Phoenix Virtual Campus
- 2003-2004: Sr. Functional Consultant, Indus International, Columbia, SC
- 2001-2002: Consultant & Trainer, Project Management Consultants, LLC, Clemson, SC
- 2001-2001: Adjunct Professor, Department of Civil Engineering Tech, Midlands Technical College, Columbia, SC
- 2000-2001: Energy Engineer, Memphis Light, Gas & Water, Memphis, TN
- 1997- 1999: Adjunct Professor, Management Institute Voorhees College, Denmark, SC
- 1996-2000: Project Engineer, SCANA Corp, Columbia, SC
- 1994-1995: Graduate Researcher, developed Project Management Plan for Georgia Pacific
- 1991-1994: Assoc Design Civil Engineer, Power Generation Group, Charlotte, NC

LEADERSHIP:

Engineering Outreach

The Savannah River Environmental Sciences Field Station (SRESFS) is managed by South Carolina State University and is aimed at recruiting and retaining underrepresented groups in environmental science and engineering and in natural resources-related fields of study. The SRESFS, a consortium of 29 colleges and universities, two federal agencies and one private corporation, is the first and only field station in the country devoted entirely to providing career, research and educational experiences in environmental science, natural resources and engineering to underrepresented groups in STEM majors.



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As the SRESFS director and chairperson of the advisory board (2007-2012), I was responsible for leading and collaborating with the 35 member advisory board; developing program controls and procedures; hiring, training and managing of full time and temporary staff, and adjunct faculty; developing and achieving annual objectives; recruiting and selecting students to participate in funded programs; tracking of former participants; procuring of all goods and services; communicating with all internal and external stakeholders; preparing and distributing all reports; and assessment of all funded programs. SCSU recognized my achievements as director of SRESFS by awarding me the Dean's Award for Outstanding Service (2009) and the She-Ro Award (2010), a university level recognition.

Partnership on state and national K-12 engineering efforts

In 2005, I directed the thirteenth annual Summer Transportation Institute (STI) that is aimed at work force development by increasing both the number and diversity of students pursuing transportation-related fields of study and careers. STI started at South Carolina State University and is now a national program with nearly 50 host sites across the United States. South Carolina State sponsored a 4-week residential program for sixteen rising 10th and 11th graders. Each week focused on a different mode of transportation and included presenters, activities, field trips and projects related to the mode. Besides highlighting careers, each week also focused on issues such as safety, use of technology, discussion of innovations, and forecasting of employment needs.

In 2011, I worked with a team of researchers to write a national high school STEM research and outreach proposal entitled "CYPRESS: Combining Youth, Passion, and Resources for Environmental Science Studies". The proposal was funded. I supported the project by providing input on curriculum, assessment, performance measures, employee selection, report development and program management.

SCHOLARSHIP

Publications

Refereed Journal Articles:

Martin, J. M., **Simmons, D. R.**, & Yu, S. L. (accepted for publication: April 2013). The Role of Social Capital in the Experiences of Hispanic Women Majoring in Engineering. *Journal of Engineering Education*.

Martin, J. M., **Simmons, D. R.**, & Yu, S. L. (under review). Family Roles in Engineering Students' Academic and Career Choices: Does Parental Education Attainment Matter?

Simmons, D. R., & Martin, J. M. (in preparation). Kin and fictive kin influence on academic decision-making of engineering students

Refereed Conference Papers:

Simmons, D. R. and Trenor, J. M. 2011. Implications of Black Greek Letter Membership on the Development of the Engineer of 2020. Proceedings of the 41st Annual FIE Conference, Rapid City, SD.

Simmons, D. R. 2011. Articulations of a Novice Qualitative Researcher. The Seventh International Congress of Qualitative Inquiry.

Trenor, J. M., **Simmons, D. R.**, & Archer, E. 2010. The roles of African American Greek organizations in engineering students' educational experiences in a

Predominantly White Institution. Proceedings of the 40th Annual FIE Conference, Washington, DC.

Grant, D. S. and **Trenor, J. M.** (2010, June). Use of the Critical Incident Technique for Qualitative Research in Engineering Education: An Example from a Grounded Theory Study. American Society for Engineering Education, 2010. Louisville, KY.

Trenor, J.M. and **Grant, Denise S.** (2009) Work in progress—A research-based tool kit for communicating unique messages about engineering to first generation college students. Proceedings of the 2009 Frontiers in Education Conference, San Antonio, TX.

Trenor, J. M., Yu, S. L., Grant, D. S., and Hibah, S. (2009, June). *Participation in a Research Experience for Teachers Program: Impact on Perceptions and Efficacy to Teach Engineering*. American Society for Engineering Education, 2009. Austin, TX: 16.

Klotz, L. and **Grant, D.S.** (2009, April). *A Balanced View of Sustainability in Civil Engineering and Construction*. Symposium conducted at the 2009 Construction Research Congress of the American Society of Civil Engineers, Seattle, Washington.

Grant, Denise and **Haselbach, Liv.** (2007, May). *Building Green: A Case Study at The University of South Carolina*. Symposium conducted at the 2007 Construction Research Congress of the American Society of Civil Engineers, Grand Bahama Island, Bahamas.

Grant, Denise and **Haselbach, Liv.** (2006, May). *Sustainable Construction at the University of South Carolina for the USC Research Foundation*. USCRF Award 15520-KA06.

Book Chapter:

Bowser, G., Roberts, N., Simmons, D., & Perales, K. (2012). The color of climate: Ecology, Environment, Climate Change, and Women of Color—Exploring Environmental Leadership From the Perspective of Women of Color in Science, in D. Rigling Gallagher (Ed). *Environmental Leadership*. Thousand Oaks: Sage.

Presentations:

- 2012 Annual Conference of the American Society for Engineering Education. Poster presentation: *Graduate Students: Influential Agents of Social Capital for Engineering Undergraduate Researchers*. San Antonio, TX.

Reviewer, Invited Speaker Or Panelist:

- Invited speaker, October 2011, Broader Impacts Workshop presented to Global Women Scholars Network in Sustainability
- Invited speaker, October 2011, "Building Tomorrow's Talent in Science and Engineering" presented at UNC-Charlotte
- Invited speaker, April 2011, Strategies to broaden participation in STEM. Communicating Science: Tools and Solutions, La Selva Biological Station in Costa Rica. Recruiting & Retaining Underrepresented Minorities in Ecology
- Workshop presenter, Leading Transformation through Sustaining and Enhancing Effective Team Performance, WEPAN 2011 National Conference, Seattle, WA

- Workshop presenter, *Planning Strategically: How to Intentionally Cultivate Tomorrow's Talent*. WEPAN/NAMEPA National Conference. April 2010, Baltimore, MD
- Reviewer, ASEE National Conference Paper 2009
- Invited Speaker, January 2009. *Experiences with PEER: Perspectives from my undergraduate years*. Best Practices in Black Student Achievement VIII, Clemson, SC
- Reviewer, ASEE Frontiers in Education, April 2009
- Moderator, April 2009 ASCE- 2009 CRC, Seattle, WA
- Reviewer, *Environmental Engineering: Fundamentals, Sustainability, Design*, 1st edition, by Mihelcic et al, Wiley Publishing, June 2009
- Moderator, October 2009 Frontiers in Education Conference San Antonio, TX
- Invited speaker, October 2008, Department of Energy Office of Environmental Management HBCU Technology Day at Spelman, Atlanta, GA
- Reviewer, ASCE Construction Research Congress (CRC) 2007

Engineering Education Professional Development

- 2012 Graduate Engineering Education Consortium for Students (GEECS) Symposium Fellow
 GEECS is an annual event, where accepted participants attend a research-based symposium and the National Science Foundation (NSF) Engineering Education Awardees Conference. The multi-day event provides an opportunity for graduate students in the field of engineering education research to share current work-in-progress, get feedback on work, and collaborate with other graduate students. Benefits of partnering with the NSF Engineering Education Awardees Conference for GEECS include the opportunity to learn about and network within the field of engineering education with experts.
- 2010 Virginia Tech Future Faculty Development Program Participant
 The Virginia Tech Future Faculty Development Program is an exciting and rewarding two-day event for a small group of doctoral students and post doctoral scholars interested in pursuing academic careers. The program brings together doctoral candidates and post doctoral scholars to Virginia Tech for an all expense paid workshop. As part of the experience, participants are hosted by a Virginia Tech department to tour research facilities, meet with current faculty to gain a greater awareness of research and teaching opportunities, and discuss their career prospects and academic work. The program is part of comprehensive strategic faculty recruitment at Virginia Tech.
- March 2009 NSF Workshop *Creating Engineering Education Opportunities: Why & How?* Arlington, VA
- October 2008 Frontiers in Education Conference Saratoga Springs, NY
- October 2007 ABET Workshops: *Faculty Workshop on Assessing Program Outcomes & ABET Annual Meeting* Incline Village, NV
- March 2006 NSF Workshop *Advancement and Retention of Underrepresented and Minority Engineering Educators*, Arlington, VA

Funding

As the SRESFS director, I was responsible for writing programmatic-focused grants to support operations, my summer salary and travel. From 2007-2012, I raised \$2,287,793 in support (not including non-federal cash matching support and in-kind services).

1. Department of Energy/Environmental Management in cooperation with the US Forestry Service (\$981,000, multi-year award: 2008–2011; \$120,000 in 2012)
2. Wal-Mart Foundation State Giving Program (\$150,000, 2009)
3. USDA/Natural Resources Conservation Service, South Carolina Program (\$125,000 in 2009 #69-4639-9-9022; \$74,999 in 2010; \$74,999 in 2011, #69-4639-11-0016; \$74,999 in 2012)
4. USDA Capacity Building Grant (Preparing for Readiness in the Environmental Professions, \$150,000 in 2010). U. S. Department of Agriculture National Institute of Food and Agriculture (NIFA) Award Number 2010-38821-21509
5. Department of Energy/Environmental Management (\$536,796, multi-year award: 2010–2012). DOE Award # DE-EM0000594

As a doctoral student, I co-authored funded NSF proposals supporting engineering education research.

ENGINEERING ACADEMIC ACTIVITIES:

Academic advising

From 2004 to 2008, I was employed as a fulltime, tenure-track, teaching faculty at South Carolina State University, where I advised at least 22 students each semester.

Classroom instruction

Classes Taught at SC State University:

- ET 250: Technical Communications
- ET 255: Engineering Economics
- CET 412: Construction Codes & Contracts
- CET 415: Fluid Mechanics
- CET 459: Senior Project Proposal
- CET 460: Senior Project
- TRP 530: Urban Transportation Planning
- TRP 640: Transportation and Land Use Planning

Instructional Innovations at South Carolina State University:

- Incorporated formal project management concepts into ET 250, CET 459 & 460 and TRP 640 courses as a way to foster leadership, management and communication skills, ingenuity, efficiency and cost savings.
- Developed and implemented several rubrics into ET 250 course so that students were aware of the purpose of the assignments that they were being asked to complete and as a way to provide specific feedback to each student.
- Used industry professionals, many of which were alumni of the institution, in the senior project course (CET 460) as advisors to the students throughout the course as a way to incorporate another perspective.
- Introduced diagnostic tests in ET 255 and CET 415 to measure student math readiness and address early any deficiencies in preparation. I met with students determined to be at risk in their skills to discuss the results of the diagnostic test, encouraged them, informed them of on campus help available and referred them to the student success center.

Online and adjunct instruction

UNIVERSITY OF PHOENIX Online Learning & Columbia Campus
Faculty Practitioner January 2003 – 2008

- Instruct junior and senior level project management and operations courses.

MIDLANDS TECHNICAL COLLEGE Columbia, SC

Adjunct Professor January 2002 – May 2002

- Instruct senior level environmental engineering course. Course covers a study of the sources, treatment, regulations, collection and distribution of water and wastewater; water and sewer pipe hydraulics; water and groundwater quality; estimation of runoff; and load design of buried pipes.

VOORHEES COLLEGE MANAGEMENT INSTITUTE Denmark, SC

Adjunct Professor Fall 1997 – Spring 1999

- Facilitate courses in degree program for adult students pursuing a bachelor of arts degree in Organizational Behavior
- Courses include: Group & Organizational Behavior, Career and Life Assessment, and Business Ethics

Teaching Professional Development

- 2009 Clemson University Office of Teaching Effectiveness and Innovation (OTEI) Training:
 - Workshop: Academic Writing: The Process of Crafting Scholarly Prose
 - Workshop: Contract Grading: Melding Learning with Assessment
 - Workshop: Learning Styles: Multiple Models, Multiple Teaching Methods
 - Workshop: Maximizing Student Learning and Participation in Discussions
 - Workshop: Writing Objective Test Items That Assess Thinking Skills
- October 2007 ABET Workshops: *Faculty Workshop on Assessing Program Outcomes & ABET Annual Meeting* Incline Village, NV
- October 2006 Southeastern Alliance for Grad. Education and the Professoriate (SEAGEP) Conference, Clemson, SC
- October 2005 – 2011, Institute on Teaching and Mentoring (various cities)

College and university committees

- (1) SC State (University-level) and UTC Scholarship Selection Committee
- (2) SACS 2010 Physical Resources Committee, Co-Chair (University-level)
- (3) ABET Continuous Improvement Committee (College-level)
- (4) Convocation Committee (University-level)
- (5) Clemson-SCSU Civil Engineering Joint Program (Department-level)
- (6) Professional Land Surveying – New Program Development Committee (Department-level)
- (7) Energy & Environment Program – New Development Committee (College-level)
- (8) Faculty Research Recognition Committee (University-level)

OTHER:

Professional registrations: Registered Professional Engineer (PE) (TN #106991), Project Management Professional (PMP) (383095), Leadership in Energy & Environmental Design Accredited Professional (LEED-AP)

Membership in professional & honor societies

- American Society of Engineering Education
- Women in Engineering ProActive Network
- American Association of Blacks in Energy
- Project Management Institute
- American Society of Civil Engineers
- Chi Epsilon, Civil Engineering Honor Society

Fellowships & awards

- 2007 Sloan Fellow
- 2008-2011 South East Alliance for Graduate Education and the Professoriate (SEAGEP) Fellow
- 2009 Dean's Award for Outstanding Service, SC State University
- 2009 Award Recognizing Dedicated Service to NSF/HBCU-UP/RISC Summer Research Internship Program
- 2010 SC State She-Ro award in recognition for leadership of the SRESFS
- 2011 NSF Study Abroad Fellowship to study the energy industry in Santiago, Chile

Exhibit 12



VirginiaTech

College of Architecture
and Urban Studies

Office of the Dean

202 Cowgill Hall (0205)
Blacksburg, Virginia 24061
540/231-6416 Fax: 540/231-6332
E-mail: davisa@vt.edu
www.caus.vt.edu

March 14, 2013

Denise R. Simmons
3409 Northshore Road
Columbia, SC 29206

Dear Dr. Simmons;

I am pleased to offer you employment in the Myers Lawson School of Construction in the College of Architecture and Urban Studies at Virginia Tech. Your rank and working title is Assistant Professor, position number 113371, with an effective date of August 10, 2013. Continuation of this appointment is subject to the availability of funds, the need for services and satisfactory performance. University policy requires that a conviction check be conducted for all non-student hires. You completed this requirement on August 17, 2012 and do not need to complete another form at this time. A copy of your job description is attached. Please refer to the attached "Terms of Faculty Offer" for additional details of the contract. If you have any questions about your responsibilities, you should contact Dr. Brian Kleiner, School Director.

This is a full-time, regular, academic-year, tenure-track appointment and carries a salary of \$82,500. It will be paid in semi-monthly payments on the first and sixteenth of the month. Employees are required to have their pay deposited electronically in their bank account and this can be accomplished by visiting <http://www.bursar.vt.edu/payroll>. A variety of benefits are included in this offer. Please contact Human Resources directly by telephone at 540-231-9331 or by referring to their website at www.hr.vt.edu for a clarification of benefits and orientation.

The Southern Association of Colleges and Schools accreditation process requires the University to employ teaching faculty that have at least the minimal academic credentials for the level they are teaching. Generally, the earned doctorate or terminal degree in the field is required. Please provide an official transcript from the institution where you earned your highest degree. Since it may take some time for your home institution to provide this documentation, we recommend that you make the request as soon as possible. Your university should send these directly to Christy Porterfield at the address above.

The Hokie Passport ID Card is the official identification card for Virginia Tech and used to access meal plans, buildings, the Hokie Passport Account; and serve as a bus pass and proof of identification for classrooms and university functions. Obtain the card at Hokie Passport Services located at 100 Student Services Building on the Virginia Tech Campus. Questions and comments can be emailed to hokiepassport@vt.edu or call 540-231-5121.

If you wish to park on campus, you must register your vehicle with the Virginia Tech Parking Services Department. A fee is required to park on campus. Information can be found at www.facilities.vt.edu/tcs/parking. If you have questions, please contact the Parking Services Department at (540) 231-3200.

(continued)

Invent the Future

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY
An equal opportunity, affirmative action institution



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We encourage all employees to subscribe to Virginia Tech's Emergency Notification System in the event of a campus emergency. The VT Alert System uses several information delivery methods to warn employees, students, and visitors of important communications from a variety of sources. Please visit the VT Alert website at <http://www.alerts.vt.edu> for more information and to subscribe.

As a salaried employee of Virginia Tech, you will be a member of a Retirement program and other benefits. In order to be paid, you must attend a full day orientation/benefits enrollment session that will include a description of your benefits and information concerning the university facilities, policies and procedures, and you will sign the necessary forms to process your pay. You will be contacted as soon as possible after your employment effective date to schedule your orientation.

You Will Be Required To Bring To Orientation:

1. A copy of your social security card
2. A copy of your visa (if applicable)
3. Birth dates of your beneficiaries
4. Spouse's social security number
5. Spouse's date of birth
6. Social security number and date of birth of legal dependent(s)
7. A blank or canceled check; unless you already have your pay deposited electronically from Virginia Tech
8. Your vehicle registration, license plate number, make and model (if you want a parking permit)

The terms and conditions of faculty employment are found in the Faculty Handbook, which is subject to change at any time by the Board of Visitors. The Handbook is available at the following website: <http://www.provost.vt.edu>. All employees are expected to ensure that business activities are conducted properly and in compliance with various federal and state laws. A list of all policies in effect is located on the university's website at <http://www.policies.vt.edu>. Many important procedures are located on the websites of the Controller's Office, Purchasing Office, Office of Sponsored Programs, and Human Resources Office and will be updated as policies change. Please refer to these for issues not addressed in the Faculty Handbook.

If the terms of this offer are agreeable, please indicate your acceptance by signing and returning this document and enclosed paperwork as soon as possible to Christy Porterfield at the above address. If you have questions regarding hiring paperwork, contact Christy at 540-231-9936 or christyp@vt.edu.

Thank you for the commitment of your time and energy to the School and we look forward to working with you.

Sincerely,



A. J. Davis, FAIA, LEED AP
Reynolds Metals Professor and
Dean

I accept the terms of this agreement as stated above.

Denise R. Smith
Signature

3/25/2013
Date

cc: Brian Kleiner, Marty Simpson, Christy Porterfield

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Nov 06 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge, First Judicial Circuit

C.A. No.: 2015-CP-38-553

South Carolina State University,..... Respondent,

v.

Denise Simmons..... Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the aforementioned REPLY TO APPELLANT'S MOTION TO SETTLE RECORD via e-mail, on November 6, 2020, addressed to Martin S. High, marty@martyhig.com.

HALLIGAN MAHONEY WILLIAMS SMITH
FAWLEY & REAGLE, PA,

s/ Kimberly Kelley Blackburn
Kimberly Kelley Blackburn, S.C. Bar No. 73699
kblackburn@hmwlegal.com