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STATE OF FLORIDA  
FIRST DISTRICT COURT OF APPEALS

ELIAS MAKERE, FSA

)

Petitioner

)

)

**Case No. : 1D20-2658**

v.

)

LT No. (FCHR) : 2019-19238

)

LT No. (DOAH) : 20-003021

ALLSTATE INSURANCE COMPANY,

)

Respondent

)

---

**PETITIONER'S MOTION FOR CERTIFICATION  
AND/OR A WRITTEN OPINION**

---

Petitioner, ELIAS MAKERE, on this 27th day of November 2020, respectfully moves this Honorable Court to certify - for Supreme Court consideration - the decision it rendered on November 12, 2020. He also asks this Court to author a written opinion (perhaps, as an alternative to certification). Petitioner proffers the following in good faith, and only on the grounds permitted by Rule 9.330 Fla. R. App. P..

Key Points:

- |     |             |                                                 |
|-----|-------------|-------------------------------------------------|
| A.) | Grounds     | Direct Conflict with authoritative law          |
| B.) | Concise     | This motion is <u>only 4 pages</u> in substance |
| C.) | No Argument | This motion does not re-argue the merits        |
| D.) | Precedence  | Florida DCAs have granted similar motions       |

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**Background:** The Court entered an appellate decision  
**Problem:** The decision conflicted with Supreme Court precedent  
**Request:** A certification that the decision conflicted with precedent  
**Alternative A:** A certification for 2 questions of great public importance  
**Alternative B:** A written opinion for the greater good

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### 9.330 | Fla R. App. P. | Certification

*"...A motion for certification shall set forth the case(s) that expressly and directly conflicts with the order or decision..."*

### 9.330 | Fla R. App. P. | Written Opinion

*"...A motion for written opinion shall set forth the reasons that the party believes that a written opinion would provide:*

- (i) a legitimate basis for supreme court review; [or]*
- (ii) an explanation for an apparent deviation from prior precedent; ..."*

### 9.330 | Fla R. App. P. | Committee Notes

*"...Subdivision (a) (2) (D) (iii) is intended to address situations in which a specific district court of appeal has exclusive subject matter jurisdiction over a type of case..."*

### Stetson Law Review | Motion Practice in Florida Appellate Courts

*"[Rule 9.330] does not require the moving party to state the ground for certification with particularity... but it is advisable to present a complete statement of the reasons for [the request]"*

#### Precedence

- Case No. 1D10-3881 - Florida 1DCA (6/24/11)
  - Case No. 4D06-2992 - Florida 4DCA (10/24/07)
  - Case No. 5D09-0088 - Florida 5DCA (12/13/10)
- Florida Appellate courts have granted similar motions

#### Abbreviations

DCA District Court of Appeal

LT Lower Tribunal

**MOTION**

**I. Preface**

1. Petitioner will not re-argue his points on appeal. Nor will he present any argument that was not previously proffered. Rather, Petitioner's motion merely points out (i) that this Court's decision conflicts with authoritative precedence; and (ii) the importance of a written opinion.

**II. Brief Recitation of Points & Authorities**

2. On September 11, 2020, Petitioner filed his *Petition for a Writ of Prohibition* (hereinafter "The Petition").<sup>1/</sup>
3. In it, he cited the binding precedent of a Supreme Court mandate (see ¶13 of The Petition). That case is titled Woodham v BCBSFL, 829 So. 2d 891 (Fla. 2002). As detailed in the pleading, Petitioner's case was identical to Woodham in all material respects (ie, timeframes for FCHR determinations).
4. Nevertheless, on November 12, 2020, this Court entered a PCA without opinion ("The Decision"); ruling against The Petition.

**III. Pertinent Facts Regarding 'Great Public Importance'**

5. On October 28, 2020, the LT<sup>2/</sup> published its 2019 annual report.<sup>3/</sup> The report disclosed that the agency was meeting its statutory timeframe on only 25% of its cases; one-third of the 75% benchmark (see **Exhibit A**).
6. Quick math shows that at least 1,153 LT cases are being victimized by the LT's continued lack of timeliness<sup>4/</sup>.

**IV. Certification | {A} | Direct Conflict**

7. Based on the facts, Petitioner concludes that The Decision directly conflicts with Woodham (a Supreme Court mandate on the same legal issue).
8. He believes that this Court should express this in a certification to the Florida Supreme Court (pursuant to Rule 9.330(C) Fla. R. App. P.).
9. In Hoffman v Jones, 280 So. 2d 431, 434 (Fla. 1973), the Supreme Court held that an appellate court did not have the power to diverge from the higher court's controlling precedent.

*"[I]f and when such a change is to be wrought by the judiciary, it should be at the hands of the Supreme Court rather than the District Court of appeal..."*

10. Thus, the standard [for reviewing the need to *certify* a decision to be in *direct conflict* with a Supreme Court mandate] is clear: a movant must show that a DCA decision conflicts with one from the Supreme Court.
11. Petitioner will satisfy that requirement as follows:

- a. The Petition was based on the LT's lack of timeliness (and subsequent loss of jurisdiction).
- b. Woodham was based on the LT's lack of timeliness (and subsequent loss of jurisdiction).
- c. Woodham was a Supreme Court case.
- d. 1DCA's decision affirmed that the LT's lack of timeliness did not confer a loss of jurisdiction.
- e. The Supreme Court's decision stated that the LT's lack of timeliness **did** confer a loss of jurisdiction.

12. With that requirement met, this Court should grant certification.

**V. Certification | {B} | Great Public Importance**

13. Moreover - and as can be seen from the large (and growing) number of equally situated cases (§5-6 *supra*) - the issue presented in The Petition has far-reaching consequences.

14. In 1986, Florida's Second DCA certified its decision to the Supreme Court; noting the likelihood that the issue would arise in "*other similar circumstances in the future*" (see Hillsborough Avia. Auth. v Hillsborough Cty GEA, 482 So. 2d 505). Thereafter, the Supreme Court accepted jurisdiction and quashed the conflicting portions.

15. More recently, in Gibbs v State, 676 So. 2d 1001, 1006 (Fla. 4th DCA 1996), the Fourth DCA certified a question of great public import because the issue affected numerous prosecutions across the state (also see Cf. Young v State, 678 So. 2d 427, 429 (Fla. 4<sup>th</sup> DCA 1996)).

16. In the instant matter, the LT's lack of timeliness spans all five district court jurisdictions of Florida (see **Exhibit B**). Thereby satisfying the prong of "great importance".

17. So, based on The Decision's wide-ranging effects, Petitioner asks this Court to certify to the Florida Supreme Court the following two questions of great public importance:

"1. DOES THE FCHR LOSE JURISDICTION OVER A CASE ONCE ITS STATUTORILY MANDATED 180-DAY INVESTIGATION WINDOW EXPIRES (SEE §760.11 FLORIDA STATUTE)?"

"2. DOES DOAH LOSE SUBSEQUENT JURISDICTION ONCE 215 DAYS ELAPSE IN AN FCHR CHARGE OF DISCRIMINATION (SEE §760.11(7) FLORIDA STATUTES)?"

## VI. Written Opinion

18.Perhaps, as an alternative to certification, this Court may issue a written opinion to distinguish Petitioner's case from Woodham.

19.In Fridovich v State, 537 So. 2d 648, 650 (Fla. 4<sup>th</sup> DCA 1989), the Fourth DCA expounded on how there were Florida Supreme Court cases "*containing language that might appear to conflict with our holding here*".

20.Petitioner, hereby wishes for a written explanation as well. One which he believes will:

a. provide a legitimate basis for supreme court review;

i. see Walsingham v State, 576 So. 2d 365 (Fla. 2d DCA 1991);  
in which Florida's Supreme Court accepted jurisdiction since the appellate court's decisions "*appear to be in conflict with*" a Florida Supreme Court Case.

ii. also see Rule 9.030(2)(A) Fla. R. App. P.

iii. as well as Art. V §3 Florida Constitution

b. explain 1DCA's apparent deviation from Woodham; and

c. guide the 1,000+ FCHR litigants who are in similar shoes (see ¶5-6 *supra*); for whom this issue is expected to recur.

**CONCLUSION**

WHEREFORE, based upon the foregoing - and after careful consideration (including placing himself in the shoes of the decision-maker) - Petitioner respectfully asks this Court for an order granting certification (and/or a written opinion) pursuant to Rule 9.330(a) Fla. R. App. P..

Dated this 27th day of November 2020.

Respectfully submitted,

**ELIAS MAKERE, FSA, MAAA** Petitioner  
s/ Elias Makere, Pro Se  
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**CERTIFICATE OF COMPLIANCE**

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New 12-point Font (contents); thus complying with the font requirements of Rule 9.210(a)(2) Fla. R. App. P.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of November 2020, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal which will send a notice of electronic filing to the attached service list.

**/s/ Elias Makere**

**Endnotes:**

<sup>1/</sup> amended the following day to <sup>4/</sup> "Quick math":  
cure two clerical errors.

<sup>2/</sup> the Lower Tribunal (FCHR) is a party to this action - pursuant to Rule 9.100(e)(2) Fla. R. App. P.

<sup>3/</sup> the "annual report" is statutorily mandated by §760.06(11) FS. Moreover, the 2019 report covered 7/1/2018 through 6/30/2019 (ie, Petitioner's case from below).

$$1,153 = 1538 \times (1 - 0.25)$$

Where:

1,538 = total LT cases received

0.25 = 25% resolved on time

1-0.25 = proportion ***not*** resolved on time

Although, the LT's 2020 report has not been released yet (due to being late), Petitioner has reason to believe that thousands more cases - ie, the cases from 7/1/19 through 6/30/20 - are suffering from the LT's continued lack of timeliness.

**SERVICE LIST**

---

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Tallahassee, Florida 32399-7020  
(agency)

## EXHIBIT A

2019 Annual Report  
Florida Commission on Human Relations  
Date Published: 10/28/2020

Lack of Timeliness  
[25% diligent]

[excerpt]  
Page 6 Only!

[marked]

## FY 2018-19 Performance Highlights

### Incoming and Outgoing Case Statistics

- Cases received/resolved:
  - 1,538 (received)
  - 1,478 (resolved)

### Legislative Long-Range Program Plan (LRPP) Measures

- Percent of cases resolved within statutory timeframes: 25 % (overall)  
(Standard: 75%)
- Number of inquiries/investigations: 7,316 (Standard: 10,000)
- Percent of determinations upheld by DOAH: 94% (Standard: 80%)

## EXHIBIT B

2019 Annual Report

Florida Commission on Human Relations

Date Published: 10/28/2020

Territorial Expanse

[all 67 counties]

[excerpt]

Page 11 Only!

## County Data: Received Cases

| County       | Age | Color | Disability | Fam. /Mar | Nat. Origin | Race | Religion | Retaliation | Sex | Total Basis | Housing Cases | TOTAL |
|--------------|-----|-------|------------|-----------|-------------|------|----------|-------------|-----|-------------|---------------|-------|
| Alachua      | 10  | 2     | 18         | 6         | 3           | 16   | 2        | 34          | 22  | 113         | 4             | 117   |
| Baker        | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Bay          | 3   | 1     | 15         | 1         | 0           | 8    | 1        | 16          | 19  | 64          | 1             | 65    |
| Bradford     | 1   | 0     | 1          | 0         | 0           | 1    | 0        | 2           | 0   | 5           | 0             | 5     |
| Brevard      | 7   | 3     | 9          | 0         | 7           | 5    | 0        | 15          | 27  | 73          | 0             | 73    |
| Broward      | 24  | 7     | 35         | 1         | 15          | 36   | 0        | 57          | 48  | 223         | 2             | 225   |
| Calhoun      | 0   | 0     | 0          | 0         | 0           | 1    | 0        | 1           | 0   | 2           | 0             | 2     |
| Charlotte    | 0   | 0     | 2          | 0         | 0           | 0    | 0        | 1           | 0   | 3           | 0             | 3     |
| Citrus       | 1   | 0     | 3          | 0         | 1           | 1    | 0        | 0           | 2   | 8           | 1             | 9     |
| Clay         | 2   | 2     | 2          | 1         | 0           | 2    | 1        | 1           | 2   | 13          | 0             | 13    |
| Collier      | 1   | 1     | 4          | 0         | 2           | 1    | 0        | 5           | 7   | 21          | 4             | 25    |
| Columbia     | 1   | 0     | 1          | 0         | 0           | 3    | 0        | 4           | 1   | 10          | 0             | 10    |
| Dade         | 6   | 1     | 11         | 0         | 5           | 10   | 1        | 17          | 9   | 0           | 0             | 0     |
| DeSoto       | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 1           | 0   | 2           | 0             | 2     |
| Dixie        | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 0           | 0   | 1           | 0             | 1     |
| Duval        | 16  | 5     | 48         | 2         | 8           | 33   | 1        | 53          | 23  | 189         | 1             | 190   |
| Escambia     | 11  | 2     | 27         | 1         | 4           | 18   | 1        | 35          | 19  | 118         | 1             | 119   |
| Flagler      | 1   | 2     | 1          | 1         | 2           | 4    | 0        | 2           | 1   | 14          | 0             | 14    |
| Franklin     | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 1           | 0   | 1           | 0             | 1     |
| Gadsden      | 0   | 0     | 1          | 0         | 0           | 6    | 0        | 12          | 3   | 22          | 0             | 22    |
| Gilchrist    | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Glades       | 0   | 0     | 1          | 0         | 0           | 1    | 0        | 0           | 0   | 2           | 0             | 2     |
| Gulf         | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 2           | 0   | 3           | 0             | 3     |
| Hamilton     | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Hardee       | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 0           | 0   | 1           | 0             | 1     |
| Hendry       | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Hernando     | 2   | 0     | 1          | 1         | 0           | 0    | 0        | 1           | 1   | 6           | 0             | 6     |
| Highlands    | 0   | 0     | 0          | 0         | 2           | 1    | 0        | 1           | 0   | 4           | 1             | 5     |
| Hillsborough | 30  | 2     | 32         | 2         | 14          | 25   | 2        | 54          | 27  | 188         | 2             | 190   |
| Holmes       | 0   | 0     | 0          | 0         | 0           | 0    | 1        | 1           | 1   | 3           | 0             | 3     |
| Indian River | 3   | 1     | 1          | 0         | 1           | 3    | 0        | 3           | 2   | 14          | 0             | 14    |
| Jackson      | 3   | 0     | 3          | 0         | 2           | 6    | 0        | 8           | 3   | 25          | 0             | 25    |
| Jefferson    | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 1           | 0   | 1           | 0             | 1     |
| Lafayette    | 0   | 0     | 0          | 1         | 0           | 0    | 0        | 0           | 0   | 1           | 0             | 1     |
| Lake         | 1   | 0     | 3          | 0         | 1           | 4    | 0        | 7           | 2   | 18          | 0             | 18    |
| Lee          | 4   | 2     | 9          | 0         | 2           | 5    | 0        | 13          | 7   | 42          | 6             | 48    |
| Leon         | 19  | 4     | 31         | 1         | 3           | 31   | 0        | 82          | 24  | 195         | 4             | 199   |
| Levy         | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 0           | 0   | 1           | 0             | 1     |
| Liberty      | 0   | 0     | 0          | 0         | 0           | 1    | 0        | 3           | 1   | 5           | 0             | 5     |
| Madison      | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Manatee      | 3   | 0     | 2          | 0         | 0           | 3    | 0        | 2           | 3   | 13          | 2             | 15    |
| Marion       | 3   | 1     | 12         | 1         | 0           | 11   | 0        | 14          | 8   | 50          | 1             | 51    |
| Martin       | 0   | 0     | 5          | 0         | 1           | 2    | 0        | 6           | 3   | 17          | 1             | 18    |
| Miami Dade   | 9   | 3     | 18         | 1         | 12          | 8    | 0        | 27          | 14  | 92          | 5             | 97    |
| Monroe       | 0   | 0     | 2          | 0         | 1           | 0    | 0        | 0           | 0   | 3           | 0             | 3     |
| Nassau       | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 1           | 0   | 1           | 1             | 2     |
| Okaloosa     | 2   | 0     | 8          | 0         | 1           | 4    | 0        | 9           | 4   | 28          | 0             | 28    |
| Okeechobee   | 0   | 0     | 0          | 0         | 0           | 1    | 0        | 2           | 1   | 4           | 0             | 4     |
| Orange       | 11  | 3     | 30         | 0         | 6           | 17   | 0        | 50          | 17  | 134         | 5             | 139   |
| Osceola      | 1   | 0     | 5          | 0         | 2           | 2    | 0        | 7           | 2   | 19          | 1             | 20    |
| Palm Beach   | 5   | 5     | 9          | 1         | 7           | 15   | 0        | 26          | 11  | 79          | 0             | 79    |
| Pasco        | 4   | 1     | 6          | 0         | 0           | 2    | 0        | 8           | 0   | 21          | 2             | 23    |
| Pinellas     | 7   | 0     | 16         | 0         | 2           | 7    | 1        | 20          | 11  | 64          | 1             | 65    |
| Polk         | 1   | 1     | 8          | 1         | 2           | 7    | 0        | 14          | 5   | 39          | 1             | 40    |
| Putnam       | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 1           | 0   | 1           | 0             | 1     |
| Santa Rosa   | 2   | 1     | 3          | 0         | 1           | 2    | 0        | 6           | 0   | 15          | 0             | 15    |
| Sarasota     | 1   | 0     | 5          | 0         | 0           | 2    | 0        | 10          | 2   | 20          | 0             | 20    |
| Seminole     | 1   | 1     | 4          | 1         | 2           | 5    | 1        | 6           | 4   | 25          | 2             | 27    |
| St. Johns    | 1   | 1     | 2          | 0         | 1           | 5    | 0        | 5           | 1   | 16          | 0             | 16    |
| St. Lucie    | 0   | 2     | 4          | 0         | 0           | 2    | 1        | 4           | 3   | 16          | 0             | 16    |
| Sumter       | 0   | 0     | 3          | 1         | 0           | 0    | 0        | 2           | 1   | 7           | 0             | 7     |
| Suwannee     | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Taylor       | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 0           | 0   | 0           | 0             | 0     |
| Union        | 0   | 0     | 0          | 0         | 0           | 0    | 0        | 2           | 1   | 3           | 0             | 3     |
| Volusia      | 2   | 0     | 8          | 0         | 1           | 5    | 0        | 11          | 4   | 31          | 0             | 31    |
| Wakulla      | 0   | 0     | 1          | 0         | 0           | 0    | 0        | 1           | 0   | 2           | 0             | 2     |
| Walton       | 1   | 0     | 1          | 0         | 0           | 3    | 0        | 7           | 3   | 15          | 0             | 15    |
| Washington   | 0   | 0     | 0          | 0         | 0           | 2    | 0        | 4           | 2   | 8           | 0             | 8     |
|              | 200 | 54    | 416        | 24        | 111         | 327  | 13       | 678         | 351 | 2114        | 49            | 2163  |

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