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22-13613-H

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA
(Appellant/Plaintiff)

v.

HON. E. GARY EARLY, ALJ
(Appellee/Defendant)

On Appeal From The
United States District Court, Florida, Northern District
4:21-cv-000096

APPENDIX TO APPELLANT'S OPENING BRIEF

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS | DOCKET SHEET

#	Date	Title	Page
-	--	Docket Sheet	0005

TABLE OF CONTENTS | VOLUME I | USFLND DOCKET (Pertinent)

#	Date	Title	Page
D01	2/16/21	Verified Complaint	0020
D02	2/16/21	Completed Complaint Form (<i>Pro Se</i> 15)	0055
D03	2/22/21	Order Requiring Handwritten Signature	0062
D04	4/6/21	Filing Fee Paid	0066
D05	4/9/21	Omnibus Order	0068
D06	4/9/21	Second Report & Recommendation	0073
D07	4/28/21	Plaintiff's Objections to R&R	0083
D08	4/29/21	Order Accepting R&R	0097
D09	4/29/21	Judgment	0099
D10	5/28/21	Plaintiff's Motion to Amend Judgment	0101
D11	5/28/21	Plaintiff's Motion for Relief from...	0104
D12	6/4/21	Notice of Appeal	0107
D13	12/30/21	Opinion (11 th Circuit)	0114
D14	1/3/22	Verified Complaint (Amended)	0121

TABLE OF CONTENTS | VOLUME I | USFLND DOCKET (Pertinent)

#	Date	Title	Page
D15	4/18/22	Order Denying Judicial Notice	0170
D16	4/19/22	Order Denying Complaint Amendment (#1)	0175
D17	6/6/22	Order Denying Complaint Amendment (#2)	0177
D18	7/13/22	Report & Recommendation for Dismissal	0180

TABLE OF CONTENTS | VOLUME SR | SUPPLEMENTAL RECORDS

#	Date	Title	Page
S01	11/10/04	Interlocutory Order Remanding for...	0183
S02	2/18/19	Defendant's Order Granting Official...	0188
S03	11/12/19	Final Order Dismissing Petition for...	0192
S04	8/12/20	Verified Complaint (<i>Makere v Allstate</i>)	0197
S05	5/14/21	Verified Complaint (<i>Makere v Early</i>)	0220
S06	6/21/21	Plaintiff's Motion in Limine	0257
S07	6/23/21	Default	0259
S08	12/14/22	<Case Activity> (<i>Makere v Allstate</i>)	0265

TABLE OF CONTENTS | VOLUME PR | SPECIFIC PUBLIC RECORDS

#	Date	Title	Page
P01	6/13/01	Pro Se Request for Transcript	0268
P02	6/15/04	Recommended Order	0270
P03	10/12/04	Clerk Transmission of Transcript	0295
P04	10/22/07	Staff Member's Transmission of...	0297
P05	8/20/08	Order Directing Litigant to Handle...	0299

#	Title	Page
-	Certificates (CIP, Service)	0301

Date Filed	#	Docket Text
2/16/21	1	COMPLAINT WITH ATTACHMENTS against E GARY EARLY, filed by ELIAS MAKERE. (Attachments: # 1 Exhibit COVER SHEET) (rcb)**No service copy or filing fee received** (Entered: 02/19/2021)
2/16/21	2	APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS by ELIAS MAKERE. (rcb) (Entered: 02/19/2021)
2/19/21	3	Notice to Pro Se (rcb) (Entered: 02/19/2021)
2/19/21		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 2 APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS, 1 COMPLAINT WITH ATTACHMENTS Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 02/19/2021)
2/22/21	4	ORDER. The Clerk of Court shall forward to Plaintiff the form used in this Court for requesting leave to proceed in forma pauperis. Plaintiff shall have until 3/22/2021, to file an amended civil rights complaint, which contains his original signature, and an amended in forma pauperis motion on the form provided to him with this Order. The Clerk of Court shall return this file upon receipt of Plaintiff's compliance with this Order or no later than 3/22/2021. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 02/22/2021. (rcb)**IFP Application Forwarded as Directed** (Entered: 02/22/2021)
3/23/21		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 4 Order. Referred to MARTIN A FITZPATRICK. (rcb)**Amended Civil Rights Complaint & Amended IFP not received by 3/22/2021** (Entered: 03/23/2021)

Date Filed	#	Docket Text
3/24/21	5	*VACATED PER 10 * REPORT AND RECOMMENDATION. It is respectfully RECOMMENDED that this case be DISMISSED for failure to prosecute and failure to comply with a Court Order. Internal deadline for referral to district judge if objections are not filed earlier: 4/21/2021. R&R flag set Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 03/24/2021. (rcb) Modified to edit docket text (vacate language) on 4/9/2021 (rcb). (Entered: 03/24/2021)
4/5/21	6	PLAINTIFF'S AMENDED COMPLAINT WITH ATTACHMENT (A-H) against E GARY EARLY , filed by ELIAS MAKERE. (rcb) # 1 Table of Contents (Entered: 04/06/2021)
4/5/21	7	PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S RECOMMENDED ORDER OF DISMISSAL by ELIAS MAKERE. (rcb) Modified to edit title (convert to motion) on 4/9/2021 (rcb). (Entered: 04/06/2021)
4/5/21	8	PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING WITH ATTACHMENTS by ELIAS MAKERE. (rcb) (Entered: 04/06/2021)
4/5/21	9	PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING by ELIAS MAKERE (rcb) (Entered: 04/06/2021)
4/6/21		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 8 PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING WITH ATTACHMENTS, 7 PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S RECOMMENDED ORDER OF DISMISSAL, 9 PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING, 6 PLAINTIFF'S AMENDED COMPLAINT WITH ATTACHMENT (A-H) Referred to MARTIN A FITZPATRICK. (rcb)**Filing Fee Received-awaiting processing** (Entered: 04/06/2021)
4/6/21		Filing fee: \$ 402.00, receipt number FLN400041470. Fee status updated to paid. (rcb) (Entered: 04/07/2021)

Date Filed	#	Docket Text
4/9/21	10	ORDER. Plaintiff's objection, ECF No. 7 , construed as a motion for reconsideration, is GRANTED. The Report and Recommendation, ECF No. 5 , is VACATED. Plaintiffs motion requesting leave to file documents in this Court electronically, ECF No. 8 , is DENIED. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/09/2021. (rcb) (Entered: 04/09/2021)
4/9/21	11	SECOND REPORT AND RECOMMENDATION. R&R flag set. It is respectfully RECOMMENDED that Plaintiff's amended complaint, ECF No. 6 , be DISMISSED because the Defendant is entitled to absolute judicial immunity. Internal deadline for referral to district judge if objections are not filed earlier: 5/7/2021. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/09/2021. (rcb) (Entered: 04/09/2021)
4/26/21	12	REQUEST TO ISSUE SUMMONS by ELIAS MAKERE (rcb) (Entered: 04/27/2021)
4/28/21		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 12 REQUEST TO ISSUE SUMMONS Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 04/28/2021)
4/28/21	13	PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S RECOMMENDED ORDER OF DISMISSAL to 11 Report and Recommendations by ELIAS MAKERE. (rcb) (Entered: 04/28/2021)
4/29/21	14	ORDER ACCEPTING 11 REPORT AND RECOMMENDATION. The report and recommendation, ECF No. 11 , is accepted and adopted, over the Plaintiff's objections, as this Courts opinion. The Clerk shall enter judgment stating, "Plaintiff's amended complaint is dismissed because Defendant is entitled to absolute immunity." The Clerk shall close the file. Signed by CHIEF JUDGE MARK E WALKER on 04/29/2021. (rcb) (Entered: 04/29/2021)

Date Filed	#	Docket Text
4/29/21	15	CLERK'S JUDGMENT re 14 Order Accepting Report and Recommendation.90 Day Exhibit Return Deadline set for 7/28/2021. Signed by CHIEF JUDGE MARK E WALKER on 04/29/2021. (rcb) (Entered: 04/29/2021)
4/30/21	16	AMENDED CLERK'S JUDGMENT re 15 Clerk's Judgment 90 Day Exhibit Return Deadline set for 7/29/2021 (rcb) (Entered: 04/30/2021)
5/28/21	19	PLAINTIFF'S MOTION TO AMEND JUDGMENT by ELIAS MAKERE. (rcb) (Motion and Notice of Appeal received on 5/28/2021-No Action at this on ECF 19) (Entered: 06/03/2021)
6/2/21	18	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 17 Notice of Appeal ; (rcb) (Entered: 06/02/2021)
6/2/21		Set Deadlines re 17 Notice of Appeal : Clerk to check status of Appeal on 8/31/2021. Certificate of Readiness (FRAP 11) due by 6/16/2021. (rcb) (Entered: 06/02/2021)
6/4/21	17	NOTICE OF APPEAL by ELIAS MAKERE. (rcb) Modified to edit filing date per ECF 20 on 6/4/2021 (rcb). (Entered: 06/02/2021)
6/4/21	20	ORDER DENYING 19 MOTION TO AMEND JUDGMENT AND MOTION FOR RELIEF FROM JUDGMENT. Plaintiff's 18 request to amend the judgment is DENIED. Plaintiff's motion for relief from judgment is DENIED. The Clerk shall close the file. In so stating, this Court recognizes the matter is ripe for appeal. That is, the notice of appeal becomes effective as of the date of this Order. Signed by CHIEF JUDGE MARK E WALKER on 06/04/2021. (rcb) . (Entered: 06/04/2021)
6/8/21	21	USCA Acknowledgment #22-13613-H USCA Appeal. (rcb) (Entered: 06/23/2021)

Date Filed	#	Docket Text
6/23/21	22	Pursuant to F.R.A.P. 11(c), #22-13613-H the Clerk of the District Court for the Northern District of Florida certifies that the record is complete for purposes of this appeal re: 17 Notice of Appeal. The entire record on appeal is available electronically. (rcb) (Entered: 06/23/2021)
7/6/21	23	Letter from ELIAS MAKERE re: Appellate Filing Fee Received on 7/6/2021 (rcb) (Entered: 07/09/2021)
7/6/21	24	Appellate Filing fee: \$ 505.00, receipt number FLN400042057. Fee status updated to paid. (rcb) (Entered: 07/09/2021)
7/28/2021	25	DOCKET ANNOTATION BY COURT: Re 16 Clerk's Judgment After review of the case, all documents are available electronically. (rcb) (Appeal Pending) (Entered: 07/28/2021)
9/2/2021		Set Deadlines re 17 Notice of Appeal : Clerk to check status of Appeal on 12/1/2021. (rcb) (Entered: 09/02/2021)
12/1/2021		Set Deadlines re 17 Notice of Appeal : Clerk to check status of Appeal on 3/1/2022. (rcb) (Entered: 12/01/2021)
12/30/2021	32	USCA JUDGMENT #21-11901 as to 17 Notice of Appeal filed by ELIAS MAKERE. It is hereby ordered, adjudged, and decreed that the opinion is-sued on this date in this appeal is entered as the judgment of this Court. (rcb) (Entered: 02/09/2022)
1/3/2022	26	(SECOND) AMENDED VERIFIED CIVIL COMPLAINT against E GARY EARLY, filed by ELIAS MAKERE. (ckm) ***No service copies provided.*** (Entered: 01/03/2022)
1/3/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 26 Amended Complaint. (ckm) (Entered: 01/03/2022)
1/10/2022	27	Request for Issuance of Summons by ELIAS MAKERE (rcb) Modified to convert into a motion on 1/24/2022 (rcb). (Entered: 01/11/2022)
1/20/2022	28	USCA OPINION by ELIAS MAKERE. In short, the district court erred in sua sponte dismissing the case at this preliminary stage of the proceedings. Accordingly, we vacate and remand the case. (rcb) (Entered: 01/21/2022)

Date Filed	#	Docket Text
1/21/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 28 USCA OPINION, 27 Request for Issuance of Summons Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 01/21/2022)
1/24/2022	29	ORDER. The Clerk of Court shall issue a summons for the Defendant and forward it to Plaintiff with this Order. Plaintiff's request for issuance of a summons, ECF No. 27 , is GRANTED. The Clerk of Court shall return this case upon the filing of an executed summons, an answer or other response to the complaint, or no later than March 25, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 01/24/2022. (rcb) (Entered: 01/24/2022)
1/24/2022		Set Deadlines/Hearings Notify Chambers & Answer due by 3/25/2022. (rcb) (Entered: 01/24/2022)
1/24/2022	30	Summons Issued as to E GARY EARLY. (rcb) **Summons forwarded with ECF 29 as directed*** (Entered: 01/24/2022)
1/28/2022	31	MANDATE of USCA #22-13613-HG as to 17 Notice of Appeal filed by ELIAS MAKERE. It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court. 30 Day Exhibit Return Deadline After Appeal Mandate set for 3/2/2022. # 1 COVER LETTER) (rcb) (Entered: 02/01/2022)
3/3/2022		Terminated 3/1/2022 Appeal Deadlines re 17 Notice of Appeal #21-11901 (rcb) (Entered: 03/03/2022)
3/4/2022	33	SUMMONS Returned Executed by ELIAS MAKERE. E GARY EARLY served on 2/23/2022, answer due 3/25/2022. (rcb) (Entered: 03/07/2022)
3/7/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 33 SUMMONS Returned Executed by ELIAS MAKERE. E GARY EARLY. Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 03/07/2022)
3/11/2022	34	DEFENDANT JUDGE EARLY'S MOTION TO DISMISS AND STRIKE. (Internal deadline for referral to judge if response not filed earlier: 3/25/2022). (SCHREIBER, CHARLES) Modified to edit title on 3/14/2022 (rcb). Modified to reopen motion on 4/21/2022 (rcb). (Entered: 03/11/2022)

Date Filed	#	Docket Text
3/14/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 34 DEFENDANT JUDGE EARLY'S MOTION TO DISMISS AND STRIKE. Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 03/14/2022)
3/14/2022	35	ORDER. Plaintiff shall have until April 12, 2022, in which to file a response in opposition to the pending motion to dismiss, ECF No. 34 . Ruling on the motion to dismiss, ECF No. 34 , is DEFERRED. The Clerk of Court shall return this case upon Plaintiff's filing of a response to the motion to dismiss, or no later than April 12, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 03/14/2022. (rcb) (Entered: 03/14/2022)
3/14/2022		Set Deadlines/Hearings Plaintiff's Response/Notify Chambers 4/12/2022. (rcb) (Entered: 03/14/2022)
3/17/2022	36	DEFENDANT JUDGE EARLY'S MOTION TO STAY AND POSTPONE PLANNING CONFERENCE, DISCLOSURES, CASE MANAGEMENT REPORT, AND ASSOCIATED DEADLINES PENDING THE COURT'S DECISION ON MOTION TO DISMISS AND STRIKE. (SCHREIBER, CHARLES) Modified to edit title on 3/17/2022 (rcb). (Entered: 03/17/2022)
3/17/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 36 DEFENDANT JUDGE EARLY'S MOTION TO STAY AND POSTPONE PLANNING CONFERENCE, DISCLOSURES, CASE MANAGEMENT REPORT, AND ASSOCIATED DEADLINES PENDINGTHE COURTS DECISION ON MOTION TO DISMISS AND STRIKE Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 03/17/2022)
3/18/2022	37	ORDER. Defendant's motion to postpone the planning conference and discovery period, ECF No. 36 , is GRANTED. Plaintiff has until April 12, 2022, in which to file a response in opposition to the pending motion to dismiss, ECF No. 34 . Ruling on the motion to dismiss, ECF No. 34 , is DEFERRED.The Clerk of Court shall return this case upon Plaintiff's filing of a response to the motion to dismiss, or no later than April 12, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 03/18/2022. (rcb) (Entered: 03/18/2022)
3/18/2022		Set Deadlines-Notify Chambers Upon Filing of Plaintiff's Response Re: 34 by 4/12/2022). (rcb) (Entered: 03/18/2022)
3/29/2022	38	PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING by ELIAS MAKERE. (rcb) (Entered: 03/30/2022)

Date Filed	#	Docket Text
3/29/2022	39	PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING by ELIAS MAKERE. (rcb) (Entered: 03/30/2022)
3/30/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 38 PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING, 39 PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING. Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 03/30/2022)
3/31/2022	40	ORDER. Plaintiff's unopposed motion to requesting permission to file documents electronically, ECF No. 38 , is DENIED.Plaintiff has until April 12, 2022, in which to file a response in opposition to the pending motion to dismiss, ECF No. 34 .Ruling on the motion to dismiss, ECF No. 34 , remains DEFERRED. The Clerk of Court shall return this case upon Plaintiff's filing of a response to the motion to dismiss, or no later than April 12, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 03/31/2022. (rcb) (Entered: 03/31/2022)
3/31/2022		Set Deadlines/Hearings Notify Chambers & Response to ECF 34 not filed earlier: 4/12/2022). (rcb) (Entered: 03/31/2022)
4/7/2022	41	DOCKET ANNOTATION BY COURT: Re 31 USCA Mandate, **Upon Remand-This matter is referred to the Magistrate Judge upon first impression** (rcb) (Entered: 04/07/2022)
4/12/2022	42	PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS filed by ELIAS MAKERE. (rcb) (Entered: 04/13/2022)
4/12/2022	43	PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT EARLY'S MOTION TO DISMISS by ELIAS MAKERE. (rcb) (Entered: 04/13/2022)
4/12/2022	44	PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF TEN (10) PUBLIC RECORDS by ELIAS MAKERE. (rcb) (Entered: 04/13/2022)
4/12/2022	45	PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT by ELIAS MAKERE. (rcb) # 1 Exhibit THIRD AMENDED COMPLAINT, #(2) ATTACHMENT- EXHIBIT A & # 3 CIVIL COVER SHEET (rcb). (Entered: 04/13/2022)
4/12/2022	46	SUMMONS REQUEST FOR KIRK HIGGINS by ELIAS MAKERE # 1 Exhibit-SUMMONS REQUEST FOR SCOTT RANGLES (rcb) (Entered: 04/13/2022)

Date Filed	#	Docket Text
4/13/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 45 PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT by ELIAS MAKERE, 43 LAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT, 46 SUMMONS REQUEST FOR KIRK HIGGINS with SUMMONS REQUEST FOR SCOTT RANGLES (EXHIBIT #1), 42 PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, 44 PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF TEN (10) PUBLIC RECORDS Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 04/14/2022)
4/13/2022	47	PLAINTIFF'S NOTICE OF NO CONSENT TO MAGISTRATE INVOLVEMENT (FAX RECEIVED) (rcb) Modified to edit/replace document on 4/18/2022 (rcb). Modified to update docket text "fax received"on 4/20/2022 (rcb). (Entered: 04/15/2022)
4/14/2022	48	PLAINTIFF'S NOTICE OF UPCOMING FILING (MOTION TO TRANSFER VENUE) (FAX RECEIVED) (rcb) Modified to edit title on 4/18/2022 (rcb). Modified to update docket text added " (FAX RECEIVED)" on 4/20/2022 (rcb). (Entered: 04/15/2022)
4/15/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 48 PLAINTIFF'S NOTICE OF UPCOMING FILING (MOTION TO TRANSFER VENUE), 47 PLAINTIFF'S NOTICE OF NO CONSENT TO MAGISTRATE INVOLVEMENT. (rcb) (Entered: 04/15/2022)
4/18/2022	49	ORDER. Plaintiff's motion requesting the Court take judicial notice of ten documents, ECF No. 44 , is DENIED. No further action will be taken on Plaintiff's recent notices, ECF Nos. 47 - 48 , and his affidavit, ECF No. 43 , will not be considered in ruling on the pending motion to dismiss, ECF No. 34 . Plaintiff has until May 6, 2022, in which to file a response to this Order which demonstrates Plaintiff properly served a copy of his response on the Defendant. Ruling on the pending motion to dismiss, ECF No. 34 , remains DEFERRED. The Clerk of Court shall return this case upon Plaintiff's compliance with this Order, or no later than May 6, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/18/2022. (rcb) Modified on 4/20/2022 (rcb). (Entered: 04/18/2022)
4/18/2022		Set Deadline- Notify Chambers Upon Filing of Plaintiff's Response to ECF 49 5/6/2022. (rcb) (Entered: 04/20/2022)

Date Filed	#	Docket Text
4/19/2022	50	THIRD REPORT AND RECOMMENDATION. It is respectfully RECOMMENDED that Plaintiff's motion to file a third amended complaint, ECF No. 45 , be DENIED on the basis of futility, and this case be REMANDED for further proceedings. Internal deadline for referral to district judge if objections are not filed earlier: 5/17/2022. R&R flag set. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/19/2022. (rcb) (Entered: 04/19/2022)
4/20/2022	51	MOTION TO TRANSFER VENUE (FAX RECEIVED) by ELIAS MAKERE. (rcb) Modified to terminate ECF 51 on 4/21/2022 (rcb). (Entered: 04/20/2022)
4/20/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 51 MOTION TO TRANSFER VENUE (FAX RECEIVED). Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 04/20/2022)
4/20/2022	52	ORDER. The Clerk of Court must return to Plaintiff, without filing, any document submitted which does not include Plaintiff's original, handwritten signature. Plaintiff has until May 6, 2022, in which to demonstrate that he properly served a copy of his response to the motion to dismiss, ECF No. 42 , on opposing counsel. Ruling on the pending motion to dismiss, ECF No. 34 , remains DEFERRED. The Clerk of Court shall return this case upon Plaintiff's compliance with this Order, or no later than May 6, 2022. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/20/2022. (rcb) (Entered: 04/20/2022)
4/20/2022		Set Deadlines/Hearings Notify Chambers/Plaintiff's Compliance RE: 42 by 5/6/2022. (rcb) (Entered: 04/20/2022)
5/9/2022	53	PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT by ELIAS MAKERE. (rcb) # 1 Exhibit FOURTH AMENDED COMPLAINT WITH ATTACHMENT (PLAINTIFF'S NOTICE OF RELATED ACTION MAKERE V ALLSTATE) (Entered: 05/10/2022)
5/9/2022	54	MOTION TO TRANSFER VENUE by ELIAS MAKERE. (rcb) (Entered: 05/10/2022)
5/9/2022	55	PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS filed by ELIAS MAKERE. (rcb) (Entered: 05/10/2022)
5/9/2022	56	PLAINTIFF'S NOTICE OF RELATED ACTION (MAKERE V FITZPATRICK) (rcb) (Entered: 05/10/2022)

Date Filed	#	Docket Text
5/10/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 56 PLAINTIFF'S NOTICE OF RELATED ACTION (MAKERE V FITZPATRICK), 55 PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, 53 PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT by ELIAS MAKERE. (#1) Exhibit FOURTH AMENDED COMPLAINT WITH ATTACHMENT (PLAINTIFF'S NOTICE OF RELATED ACTION MAKERE V ALLSTATE), 54 MOTION TO TRANSFER VENUE. Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 05/10/2022)
5/10/2022	57	ORDER. Accordingly, it is ORDERED that the Clerk's Office shall assign another Magistrate Judge to this action based upon my disqualification. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 05/10/2022. Motions referred to MICHAEL J FRANK. (rcb)**PLEASE USE NEW JUDGE'S INITIALS 4:21cv96-MW-MJF** (Entered: 05/10/2022)
5/10/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MICHAEL J FRANK notified that action is needed Re: 57 ORDER. Referred to MICHAEL J FRANK. (rcb) (Entered: 05/10/2022)
5/11/2022	58	ORDER OF DISQUALIFICATION. Accordingly, I disqualify myself from this case because Plaintiff has filed a civil action against me in state court, and an objective observer could entertain a significant doubt about my impartiality in this case. See 28 U.S.C. § 455(a); United States v. Patti, 337 F.3d 1317, 1321 (11th Cir. 2003). The Clerk shall reassign this case to another district judge within this district. CHIEF JUDGE MARK E WALKER recused. Case reassigned to JUDGE ALLEN C WINSOR for all further proceedings. Signed by CHIEF JUDGE MARK E WALKER on 05/11/2022. (rcb)**PLEASE USE NEW JUDGE'S INITIALS IN 4:21cv96-AW/MJF** (Entered: 05/11/2022)
5/11/2022		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ALLEN C WINSOR notified that action is needed Re: 58 ORDER OF DISQUALIFICATION. (rcb) (Entered: 05/11/2022)
5/17/2022	59	RESPONSE in Opposition re 53 MOTION for Leave to Amend Complaint filed by E GARY EARLY. (SCHREIBER, CHARLES) (Entered: 05/17/2022)
5/17/2022	60	RESPONSE in Opposition re 54 MOTION to Transfer Case to MIDDLE DISTRICT OF JACKSONVILLE filed by E GARY EARLY. (SCHREIBER, CHARLES) (Entered: 05/17/2022)

Date Filed	#	Docket Text
5/17/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MICHAEL J FRANK notified that action is needed Re: 59 Response in Opposition to Motion, 60 Response in Opposition to Motion, 53 MOTION for Leave to Amend Complaint, 54 MOTION to Transfer Case to MIDDLE DISTRICT OF JACKSONVILLE. Referred to MICHAEL J FRANK. (jcw) (Entered: 05/17/2022)
5/20/2022	61	SECOND UNOPPOSED MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING by ELIAS MAKERE. (jcw) (Entered: 05/23/2022)
5/23/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MICHAEL J FRANK notified that action is needed Re: 49 Order - No response filed; 61 MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING. Referred to MICHAEL J FRANK. (jcw) (Entered: 05/23/2022)
5/23/2022		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ALLEN C WINSOR notified that action is needed Re: 50 THIRD REPORT AND RECOMMENDATION - No objections filed. (jcw) (Entered: 05/23/2022)
5/27/2022	62	ORDER DENYING MOTION TO AMEND. The earlier motion to amend, ECF No. 45 , is DENIED. The magistrate judge's recommendation, ECF No. 50 , is ACCEPTED. The magistrate judge will determine whether to allow the latest proposed amendment, ECF No. 53 . And the magistrate judge will conduct further appropriate proceedings. Signed by JUDGE ALLEN C WINSOR on 5/27/2022. (atm) (Entered: 05/31/2022)
5/31/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MICHAEL J FRANK notified that action is needed Re: 53 MOTION, 62 Order. Referred to MICHAEL J FRANK. (atm) (Entered: 05/31/2022)
6/6/2022	63	ORDER denying without prejudice 53 MOTION FOR LEAVE TO AMEND COMPLAINT. Plaintiff's proposed fourth amended complaint shall not take effect. Signed by MAGISTRATE JUDGE MICHAEL J FRANK on 6/6/2022. (jcw) (Entered: 06/06/2022)
6/21/2022	64	NOTICE OF RELATED ACTION by ELIAS MAKERE (jcw) (Entered: 06/22/2022)
6/22/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MICHAEL J FRANK notified that action is needed Re: 64 NOTICE OF RELATED ACTION. (jcw) (Entered: 06/22/2022)

Date Filed	#	Docket Text
6/30/2022	65	ORDER - I hereby disqualify myself from handling any matter or proceedings in the above-styled case. The clerk of the court is directed to randomly reassign this case to another United States Magistrate Judge. The clerk also shall change the docket and case number to reflect the reassignment. Signed by MAGISTRATE JUDGE MICHAEL J FRANK on 6/30/2022. Motions referred to HOPE T CANNON. (jcw) (Case reassigned to MAGISTRATE JUDGE HOPE T CANNON for all further proceedings. MAGISTRATE JUDGE MICHAEL J FRANK no longer assigned to case.) (Entered: 06/30/2022)
6/30/2022		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE HOPE T CANNON notified that action is needed Re: 65 Order Reassigning Case. (jcw) (Entered: 06/30/2022)
7/13/2022	66	REPORT AND RECOMMENDATION. It is respectfully RECOMMENDED: That Judge Early's Motion to Dismiss, Doc. 34 , Plaintiff's second amended complaint be GRANTED. That all pending motions in this case be terminated, including the motion to transfer, Doc. 54 , and second motion to access the CM/ECF, Doc. 61 . That the clerk be directed to close this file. Signed by MAGISTRATE JUDGE HOPE T CANNON on 07/13/22. R&R flag set (Internal deadline for referral to district judge if objections are not filed earlier: 8/10/2022.) (jfb) (Entered: 07/13/2022)
8/2/2022	67	OBJECTION to 66 Report and Recommendations by ELIAS MAKERE. (atm) (Entered: 08/08/2022)
8/16/2022		ACTION REQUIRED BY DISTRICT JUDGE: Chambers of JUDGE ALLEN C WINSOR notified that action is needed Re: 66 REPORT AND RECOMMENDATION, 67 Objection to Report and Recommendations (bcp) (Entered: 08/16/2022)
9/29/2022	68	ORDER OF DISMISSAL. The motion to dismiss (ECF No. 34) is GRANTED. All other pending motions are denied as moot. The report and recommendation (ECF No. 66) is ADOPTED and INCORPORATED into this order. The clerk will enter a judgment that says, "Plaintiff's claims are dismissed on the merits based on judicial immunity." The clerk will then close the file. Signed by JUDGE ALLEN C WINSOR on 9/29/2022. (atm) (Entered: 09/29/2022)

Date Filed	#	Docket Text
9/29/2022	69	CLERK'S JUDGMENT re 68 Order of Dismissal (atm) (Entered: 09/29/2022)
10/24/2022	75	NOTICE of Change of Address by ELIAS MAKERE to: PO BOX 324, HOBART, IN 46342 (atm) (Entered: 10/27/2022)
10/25/2022	70	NOTICE OF APPEAL as to 68 ORDER OF DISMISSAL, 69 Clerk's Judgment, by ELIAS MAKERE. (kdm) (Entered: 10/25/2022)
10/25/2022	71	MOTION for Leave to Appeal in forma pauperis by ELIAS MAKERE. (kdm) (Entered: 10/25/2022)
10/25/2022	72	MOTION For Relief From Judgment by ELIAS MAKERE. (kdm) (Entered: 10/25/2022)
10/25/2022	73	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 70 Notice of Appeal. (kdm) (Entered: 10/26/2022)
10/25/2022	74	Appeal Instructions re: 70 Notice of Appeal : The Transcript Request Form is available on the Internet at http://www.flnd.uscourts.gov/forms/Attorney/ECCA_transcript_form_fillable.pdf **PLEASE NOTE** Separate forms must be filed for each court reporter in both the district court and the appeals court. Transcript Order Form due by 11/8/2022. (kdm) (Entered: 10/26/2022)
10/26/2022		Set Deadlines re 70 Notice of Appeal : Certificate of Readiness (FRAP 11) due by 11/26/2022. Clerk to check status of Appeal on 1/26/2023. (kdm) (Entered: 10/26/2022)
10/27/2022	76	RESPONSE in Opposition re 72 MOTION For Relief From Judgment filed by E GARY EARLY. (SCHREIBER, CHARLES) (Entered: 10/27/2022)
10/31/2022	77	ORDER DENYING 72 MOTION FOR RELIEF FROM JUDGMENT AND DENYING 71 MOTION TO PROCEED IFP ON APPEAL. Signed by JUDGE ALLEN C WINSOR on 10/31/2022. (kdm) (Notified USCA via NEF.) (Entered: 10/31/2022)
10/31/2022	78	USCA Case Number 22-13613-H for 70 NOTICE OF APPEAL as to 68 ORDER OF DISMISSAL, 69 Clerk's Judgment. (kdm) (Entered: 11/01/2022)
11/8/2022	79	TRANSCRIPT REQUEST by ELIAS MAKERE - no hearings held (atm) (Entered: 11/09/2022)

Date Filed	#	Docket Text
11/28/2022		Appeal Deadlines Terminated Certificate of Readiness Due11/26/2022 re 70 Notice of Appeal filed by ELIAS MAKERE (bkp) (Entered: 11/28/2022)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 01

PAGES 0020 - 0054

SHORT TITLE: Verified Complaint

DATE ENTERED: 2/16/2021

DOC TYPE: Pleading

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against -

HON. E. GARY EARLY, ALJ
(Defendant)

VERIFIED CIVIL COMPLAINT

42 USC §1983
January 31, 2021

JURY TRIAL DEMANDED

♪

Deep in the chambers of a state agency, a man cried foul of a corporation's conduct. With due speed, the agency transmitted both of his fundamental sounds to a nearby hearing officer.

An officer, however, with corrupted hearing. An officer, however, who insisted that only one sound was made; eschewing the second for the echoed, stereotyped tales of his fathers.

His perjurious actions were not sound. For they ran afoul of **the man** - and **the grounds** that constituted **the land** which his **forefathers found**.

♪

TABLE OF CONTENTS

Preface	2
Table of Contents	3
I. Nature of Claim	4
II. Jurisdictional Amount	4
III. Parties	5
IV. Venue	5
V. Statutory Prerequisites	5
VI. Statement of Facts	6
VII. Ultimate Facts	10
VIII. Legal Application	11
Certificates (Compliance, Service, Good Faith)	16
Verified Oath	17
Exhibits	18

ABBREVIATIONS

ALJ	Administrative Law Judge
DOAH	Division of Administrative Hearings (Florida)
FCHR	Florida Commission on Human Relations
FS	Florida Statute (2020)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT):

)

Division: (4) Tallahassee

HON. E. GARY EARLY, ALJ

)

Jury Trial Demanded

Defendant,

)

☒ Yes | ☐ No

VERIFIED COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 31st day of January 2021 and hereby sues Defendant, the Honorable E. Gary Early, and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 USC §1983 - the Ku Klux Klan Act of 1871 ("§1983") - to redress Defendant's unlawful conduct towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Unlawful conduct that infringed on Plaintiff's constitutional rights (including but not limited to the 1st, 5th, and 14th amendments).

II. JURISDICTION: AMOUNT

2. Pursuant to 28 USC §2201 and §2202, Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars (\$30,000) - exclusive of interest, costs, and attorney fees (also see 42 USC §1985, 42 USC §1988, Rule 54 Fed. R. Civ. P.).

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County).

4. Upon information and belief, Defendant - at all times material hereto - worked and lived in-or-around Tallahassee, FL (Leon County). Furthermore, Defendant was an administrative law judge (see §120.65 FS) for Florida's Division of Administrative Hearings. A state agency for the territory's executive branch of government (see §20.22(2)(f) FS).

IV. JURISDICTION: VENUE

5. Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 FS (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. It appears that no administrative remedies need to be exhausted before initiating this lawsuit. Indeed, DOAH does not have a formal grievance procedure for addressing unlawful conduct of its officers. Thus, the matter before this Honorable Court is ripe for adjudication.

VI. STATEMENT OF THE FACTS

7. Plaintiff fell into Defendant's grasp by virtue of a lawsuit that he filed against a private corporation. A brief review of that case is important for contextualizing Defendant's conduct.

Originating Lawsuit (Stage Agency, *Makere v Allstate*)

8. On June 30, 2017, Plaintiff filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1), he alleged that his former employer (Allstate Insurance Company) had violated his civil rights on the basis of race and sex (see Exhibit A).

9. On September 8, 2017, Allstate denied both allegations (see Exhibit B). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see Exhibit C):

"Complainant was terminated solely because he failed his [FSA] exam."

- Allstate Insurance Company, 9/8/17

10. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race and sex were the basis of Plaintiff's complaint (see Exhibit D).

11. On January 19, 2018, Plaintiff filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see Exhibit E). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.

12. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff's case (circa November 13, 2018).

13.Despite the procedural incongruities, the facts continued to develop in Plaintiff's favor; heavily.

14.Allstate made it known that many of its *other* employees had also failed exams. Yet, Allstate never fired any of them. This was the '*smoking gun*' for proving that Allstate's reason for terminating Plaintiff's employment was a pretext.

15.Moreover, at the hearing, three other revelations were cementing:

a. Allstate granted the work-from-home privilege to its *other* employees. An accommodation it denied to Plaintiff on countless occasions.

b. Allstate made Plaintiff pay \$1,025 for an actuarial exam fee; a payment it never required any of its *other* employees to make.

c. Allstate paid Plaintiff an annual salary that was significantly lower than his similarly situated comparators.

16.These core facts rendered Plaintiff's lawsuit (against Allstate) a textbook case of employment discrimination. One which - unfortunately - ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).

17.Faced with these probative facts, Defendant went on the attack.

Defendant's Unlawful Conduct: (A) Evidence Suppression

18.On November 30, 2018, during the moments in which the payment disparity was being revealed (see ¶15b, *supra*), Defendant ordered Plaintiff to cease questioning.

19. After the hearing – around January 9, 2019 – Plaintiff asked Defendant for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation.

20. Two days later (January 11, 2019), Plaintiff received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (\$15b) – and Defendant's cessation order.

a. It is important to note that prior to this date, Plaintiff had never requested a hearing transcript on his case.

i. Plaintiff suspects that Defendant knew this, and was preying on Plaintiff's novice (Plaintiff was *pro se*).

21. Given these circumstances – and upon Plaintiff's information/belief – Defendant willfully and knowingly hid evidence.

Defendant's Unlawful Conduct: (B) Perjury

22. Defendant took it one step further, though, by making a wholesale removal of Plaintiff's sex discrimination charge.

23. On April 19, 2019, Defendant entered its Recommended Order ("RO").

24. The first page of the document had a section titled "*Statement of the Issue*". Where Defendant excluded Plaintiff's sex discrimination charge (see **Exhibit F**).

25. The second page had a section titled "*Preliminary Statement*". Where Defendant continued to exclude Plaintiff's sex discrimination charge. This time, however, Defendant made the fateful declaration that Defendant never complained of sex discrimination prior to the DOAH proceedings (see ¶11, *supra*) (see **Exhibit G**).

"[Plaintiff], also *for the first identifiable time*, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination""

- The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

26. Defendant repeated that highlighted line (ie, "for the first identifiable time") several more times throughout his authored RO.

27. The statement, of course, was false.

28. Plaintiff did charge Allstate with sex discrimination.

a. He did so in his original charge (6/30/17, see ¶8);

b. Allstate acknowledged the sex basis (9/8/17, ¶9); and

c. The FCHR explicitly ruled on the basis of sex (12/15/17, ¶10)

29. Nevertheless, the force and effect of Defendant's statement made the FCHR change its tune.

30. On June 27, 2019, the FCHR issued its Final Order ("FO"). In which it listed race as the only protected characteristic in Plaintiff's complaint (see Exhibit H); and adopted Defendant's ruling.

31. Defendant's lie had its intended effect.

32. Now, it is important to recognize that Defendant knew he was lying.

Defendant's Knowledge of the Truth

33. Prior to authoring his RO, Defendant deliberately acknowledged that the sex discrimination charge was in Plaintiff's originating complaint.

34. On February 6, 2019, Allstate moved Defendant to take official recognition of the FCHR's Determination (under §90.201 FS).^{1/}

35. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."

- The FCHR | 12/15/17 | Florida

36. On February 18, 2019, Defendant granted the motion. Thereby cementing - unequivocally - that he **knew** that Plaintiff charged Allstate with sex discrimination. He said the following (highlights added).

"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."

- The Honorable E. Gary Early, ALJ | February 18, 2019 | Florida

37. Thus, Defendant's repeated "statements" to the contrary were a known lie (a big lie - in fact).

38. A big lie that impacted the outcome of Plaintiff's lawsuit against Allstate. A case which sought monetary damages (among other things).

VII. ULTIMATE FACTS

39. Defendant broke the law in his quest to deny Plaintiff relief.

Defendant:

- a. hid evidence (see ¶18-21); and
- b. committed perjury (see ¶22-38).

VIII. LEGAL APPLICATION

COUNT I: FIRST AMENDMENT RIGHT TO LEGAL PROTECTION | 42 USC §1983

40. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

41. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to petition the State of Florida for a redress of his grievances against Allstate Insurance Company.

42. While acting under the color of state law (§120.569 FS, §120.65 FS), Defendant denied Plaintiff access to the state's court system (see §760.11(7) FS). An act that violated Plaintiff's First Amendment right (1st Amendment US Constitution).

43. Defendant did so via evidence suppression and perjury (§92.525 FS).

COUNT II: FIFTH AMENDMENT RIGHT TO DUE PROCESS | 42 USC §1983

44. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

45. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to due process. It is well settled that a violation of due process occurs when an agency excludes/removes a legal basis from a claimant's discrimination charge.

46. Thus, while acting as a state hearing officer (§120.569 FS, §120.65), Defendant violated Plaintiff's constitutional rights (5th Amendment US Constitution) by criminally removing the sex discrimination basis from his complaint.

COUNT III: FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION | 42 USC §1983

47. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

48. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a fair trial on the matters litigated.

49. While acting as the administrative law judge on Plaintiff's case (ie, under the '*color of state law*' - §120.569 FS, §120.65 FS) - Defendant discriminatorily prevented Plaintiff from attaining the legal protections that Florida afforded other similarly-situated people.

50. Defendant did so when he (a) suppressed crucial evidence (§18-21); and (b) perjured himself (§22-38).

51. As such, Defendant violated Plaintiff's constitutional rights to the "equal protection of [§760.11 FS]" (14th Amendment US Constitution).

COUNT IV: SUPREMACY CLAUSE | 42 USC §1983

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

53. Defendant's unlawful actions (individually and in total) breached Article VI Section 2 of the US Constitution (ie, the "Supremacy Clause"). He did so when he usurped the federal government's power to protect Plaintiff from 1st, 5th, and 14th amendment violations.

COUNT V: PERJURY

54. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 38).

55. Defendant - infused with the power bestowed upon him by statute - broke the law (§92.525 FS) by making a false statement of material fact. He sold his falsehood to another state agency - which was acting in its official capacity (§22-30).

56. That agency (the FCHR) bought his lie; and thereby cemented Defendant's violation of Plaintiff's constitutional rights (1st Amendment - access to the court; 5th Amendment - due process; 14th Amendment - equal protection; Art. VI §2 - supremacy clause).

JUDICIAL IMMUNITY

57. The Doctrine of Judicial Immunity does not attach to this case for two fundamental reasons.

58. First, Defendant is not a judicial officer. Although he is a judge *per se*, he is an administrative judge. A designation that does not afford him the immunities reserved for judicial officers.

59. Secondly, and perhaps more importantly, Defendant broke the law (§92.525 FS - perjury). Judicial Immunity does not cover legal violations.

DAMAGES

60. As a direct and proximate result of said acts, Plaintiff has suffered - and continues to suffer - financial loss and loss of earning capacity. Plus, he has suffered (and continues to suffer) mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

61. As a further result of Defendant's constitutional breaches, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

62. Defendant's unlawful acts and discriminatory patterns demonstrate a callous disregard and reckless indifference to Plaintiff; that justifies an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant.

63. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.

a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

64. Pursuant to Amendment 7 of the United States Constitution (and Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully requests that this honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

65. WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

- b. Declaring that Defendant violated §1983;
- c. Enjoining Defendant from committing further violations of §1983;
- d. Awarding Plaintiff compensatory damages (back pay, front pay, including interest, lost fringe benefits, etc.) which Defendant's unlawful acts precluded him from obtaining.
- e. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).
- f. Awarding Plaintiff pre-judgment interest.
- g. Awarding Plaintiff punitive damages; and
- h. Awarding such other and further relief as is just, equitable, and proper.



Dated this 31st day of January 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

P: (904) 294-0026

E: justice.actuarial@gmail.com

W: TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January 2021, I filed the foregoing with the Clerk of Courts by mailing it to United States Courthouse; 111 N. Adams St, Ste 322; Tallahassee, FL; 32301.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Rule 11 Fed. R. Civ. P. the foregoing (1) has been submitted in good faith; (2) is supported by existing law; (3) is supported by indisputable evidence (and will likely be compounded with further evidence); and (4) the complaint otherwise complies with the requirements of Rule 11.

/s/ Elias Makere

Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Moreover, the ultimate, material facts laid out above come from publicly available sources. Thus, they are not subject to dispute because *"they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"*. Some of the other facts are based on information and belief. These two elements come from my own personal observation, knowledge, and experience – coupled with circumstantial evidence of the matter.

Executed on this 31st day of January 2021.

UNITED STATES OF AMERICA



1/31/2021

Elias Makere, Plaintiff/Affiant

Endnotes:

^{1/} in the administrative realm, "official recognition" = "judicial notice"

Note: an electronic copy of this document can be downloaded from:
www.TextBookDiscrimination.com/Pages/Misc/ALJPerjury/

EXHIBIT A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

201701432

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

RECEIVED
JUN 30 2017
2017 JUN 30 PM 12:32

EXHIBIT B

Position Statement

From: Allstate
To: State Agency (FCHR)
9/8/2017

(note: Allstate = Plaintiff's former employer)

[marked]

(first page only)



Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.¹ It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

EXHIBIT C

Allstate's Termination Rationale
(ie, Allstate fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

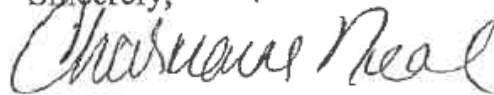
Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT D

Notice of Determination

From: State Agency (FCHR)

To: Plaintiff/Allstate/Defendant's Agency
12/15/2017

[marked]



Rick Scott
Governor

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007

<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT E

Petition for Relief

From: Plaintiff
To: State Agencies (FCHR/DOAH)
1/19/2018

[marked]

(first page only)

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

PETITION SUPPLEMENT

Employment Discrimination (Race, Sex)

Here is the supplement to the Petition for Relief form. This document will begin with a description of the items in dispute. From there, the remaining pages exist to familiarize you with the case (legal elements, timeline, events, people, secured evidence, and requested evidence).

Petitioner: Elias Makere, Former Allstate Employee
Dates: April 2014 – October 2016
Race: Black
Sex: Male
Existence of Retaliation? Yes

000032

EXHIBIT F

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(Pages 1 and 2 only)

{Defendant's removal of sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs.

Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE

Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT G

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(2nd page only)

{defendant's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT H

FCHR Final Order
Exclusion of Sex Discrimination Complaint

From: State Agency (FCHR)
To: Defendant/Plaintiff/Allstate
6/27/2019

[marked]

(first page only)

{end result of Defendant's 'big lie'}

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY

Respondent.

EEOC Case No. None

FCHR Case No. 2017-01432

DOAH Case No. 18-0373

FCHR Order No. 19-044

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Elias Makere filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Allstate Insurance Company, committed unlawful employment practices by harassing and terminating Petitioner on the basis of Petitioner's race (Black). Petitioner also alleged that Respondent unlawfully retaliated against Petitioner.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 02

PAGES 0055 - 0061

SHORT TITLE: Completed Complaint Form (*Pro Se 15*)

DATE ENTERED: 2/16/2021

DOC TYPE: Pleading

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 1

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Tallahassee Division

ELIAS MAKERE, FSA, MAAA

Case No. _____

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

HON. E. GARY EARLY, ALJ

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☒ Yes ☐ No

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Elias Makere, FSA, MAAA		
Address	3709 San Pablo Rd S #701		
	Jacksonville	FL	32224
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Duval		
Telephone Number	904.294.0026		
E-Mail Address	Justice.Actuarial@gmail.com		

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name	Hon. E. Gary Early, ALJ		
Job or Title (if known)	Administrative Law Judge (Florida's Division of Administrative Hearings)		
Address	1230 Apalachee Pkwy		
	Tallahassee	FL	32399
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County	Leon		
Telephone Number	850.488.9675 x5462		
E-Mail Address (if known)	Gary.Early@doah.state.fl.us Eugene.Early@doah.state.fl.us		
☒ Individual capacity ☐ Official capacity			

Defendant No. 2

Name			
Job or Title (if known)			
Address			
	<i>City</i>	<i>State</i>	<i>Zip Code</i>
County			
Telephone Number			
E-Mail Address (if known)			
☐ Individual capacity ☐ Official capacity			

Defendant No. 3

Name

Job or Title (if known)

Address

City

State

Zip Code

County

Telephone Number

E-Mail Address (if known)

☐

Individual capacity

☐

Official capacity

Defendant No. 4

Name

Job or Title (if known)

Address

City

State

Zip Code

County

Telephone Number

E-Mail Address (if known)

☐

Individual capacity

☐

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐

Federal officials (a *Bivens* claim)

☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1st Amendment - Access to the Courts

5th Amendment - Due Process

14th Amendment - Equal Protection, Due Process

18 USC §1621 - Perjury

§92.525 Florida Statute - Perjury

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia.” 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Defendant is an Administrative Law Judge with Florida's Division of Administrative Hearings (DOAH). DOAH is a state agency pursuant to §20.22(2)(f) Florida Statute (2020).

At all times pertinent, Defendant was adjudicating Plaintiff's administrative lawsuit.

Defendant did so under the color of law - as prescribed by §120.569(2) Florida Statute (2020).

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

Florida.

United States of America.

- B. What date and approximate time did the events giving rise to your claim(s) occur?

Fall 2018 - Spring 2019

- C. What are the facts underlying your claim(s)? (*For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?*)

--- Background ---

Plaintiff was suing his former employer for employment discrimination.

His lawsuit took the common path for Floridians (administrative agency, administrative hearing).

The pertinent/material facts of Plaintiff's case were (1) in his favor, (2) clear-cut, and (3) not dependent on interpretation. In other words, he had a very strong case ("slam dunk case").

Pursuant to §760.11, Plaintiff would be entitled to state court access.

--- Violations ---

Midway through Plaintiff's lawsuit, Defendant became the hearing officer over his case (at DOAH).

Defendant engaged in a series of unscrupulous behavior (evidence suppression, exceeding his jurisdiction, etc.).

Culminating in Defendant perjuring himself (≈ April 2019; §92.525 FS).

~~The facts surrounding Defendant's crime can be found from public records (ie. "facts that are not subject~~

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

--- Financial Harm ---

- ▶ Loss of Income
- ▶ Legal Costs
- ▶ Loss of Income

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

--- Compensatory Damages ---

(Back pay, Front pay, Fringe Benefits)

--- Punitive Damages ---

(to deter Defendant's comrades from committing similar violations; to combat Defendant's reckless disregard for the law; to amend for Defendant's malice; to enjoin Defendant from repeating such acts; etc.)

--- Declaratory Relief ---

Enjoin Defendant from further unlawful conduct

--- Equitable Relief ---

Plaintiff seeks an award of all other relief that this Honorable Court deems just, equitable, and proper.

Plaintiff expects damages to exceed \$30,000.

Thus, due to the currently undetermined amount, Plaintiff asks this Court to permit such a final calculation to wait until the appropriate time.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 01/31/2021

Signature of Plaintiff /s/ Elias Makere

Printed Name of Plaintiff Elias Makere, FSA, MAAA

B. For Attorneys

Date of signing: _____

Signature of Attorney _____

Printed Name of Attorney _____

Bar Number _____

Name of Law Firm _____

Address _____

City *State* *Zip Code*

Telephone Number _____

E-mail Address _____

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 03

PAGES 0062 - 0065

SHORT TITLE: Order Requiring Handwritten Signature

DATE ENTERED: 2/22/2021

DOC TYPE: Magistrate Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 4

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ELIAS MAKERE, FSA, MAAA,

Plaintiff,

vs.

Case No. 4:21cv96-MW-MAF

HON. E. GARY EARLY, ALJ,

Defendant.

_____/

ORDER

Plaintiff, proceeding pro se, sought to initiate this case by submitting a civil rights complaint under 42 U.S.C. § 1983, ECF No. 1, and an application for proceeding without payment of the filing fee, ECF No. 2. Neither of those documents can be addressed at this time because they are not properly signed.

Rule 11 requires that “[e]very pleading, written motion, and other paper must be signed by at least one attorney of record . . . or by a party personally if the party is unrepresented.” Fed. R. Civ. P. 11(s). “The court must strike an unsigned paper unless the omission is promptly corrected

after being called to the attorney's or party's attention.” Fed. R. Civ. P. 11(a).

In this case, Plaintiff sought to affix an electronic signature to both the complaint, see ECF No. 1 at 6, 22, and the in forma pauperis motion, ECF No. 2 at 2. However, the local rules for this Court provide that documents filed by pro se parties must include “the party’s handwritten signature,” not an electronic signature. N.D. Fla. Loc. R. 5.1(E). Only attorneys are permitted to electronically file documents and do so with an electronic signature. N.D. Fla. Loc. R. 5.4(C).

Accordingly, to proceed with this case, Plaintiff must submit a complaint containing his handwritten signature. Furthermore, Plaintiff must either pay the filing fee for this case or submit an in forma pauperis motion which contains his handwritten signature. Moreover, Plaintiff’s prior motion, ECF No. 2, was not on the form used in this Court. Plaintiff will be provided the correct form and he shall have until **March 22, 2021**, to comply with this Order. No further action will be taken on this case until he does so.

Accordingly, it is

ORDERED:

1. The Clerk of Court shall forward to Plaintiff the form used in this Court for requesting leave to proceed in forma pauperis.

2. Plaintiff shall have until **March 22, 2021**, to file an amended civil rights complaint, which contains his original signature, and an amended in forma pauperis motion on the form provided to him with this Order.

3. **Failure to comply with this Court Order may result in a recommendation of dismissal of this action.**

4. The Clerk of Court shall return this file upon receipt of Plaintiff's compliance with this Order or no later than March 22, 2021.

DONE AND ORDERED on February 22, 2021.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 04

PAGES 0066 - 0067

SHORT TITLE: Filing Fee Paid

DATE ENTERED: 4/6/2021

DOC TYPE: Clerk Entry

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: n/a



Date Filed	#	Docket Text
02/16/2021	1	COMPLAINT WITH ATTACHMENTS against E GARY EARLY, filed by ELIAS MAKERE. (Attachments: # 1 Exhibit COVER SHEET) (rcb)**No service copy or filing fee received*** (Entered: 02/19/2021)
02/16/2021	2	APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS by ELIAS MAKERE. (rcb) (Entered: 02/19/2021)
02/19/2021	3	Notice to Pro Se (rcb) (Entered: 02/19/2021)
02/19/2021		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 2 APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS, 1 COMPLAINT WITH ATTACHMENTS Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 02/19/2021)
02/22/2021	4	ORDER. The Clerk of Court shall forward to Plaintiff the form used in this Court for requesting leave to proceed in forma pauperis. Plaintiff shall have until 3/22/2021 , to file an amended civil rights complaint, which contains his original signature, and an amended in forma pauperis motion on the form provided to him with this Order. The Clerk of Court shall return this file upon receipt of Plaintiff's compliance with this Order or no later than 3/22/2021 . Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 02/22/2021. (rcb)**IFP Application Forwarded as Directed*** (Entered: 02/22/2021)
03/23/2021		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 4 Order. Referred to MARTIN A FITZPATRICK. (rcb)**Amended Civil Rights Complaint & Amended IFP not received by 3/22/2021** (Entered: 03/23/2021)
03/24/2021	5	*VACATED PER 10 * REPORT AND RECOMMENDATION. It is respectfully RECOMMENDED that this case be DISMISSED for failure to prosecute and failure to comply with a Court Order. Internal deadline for referral to district judge if objections are not filed earlier: 4/21/2021 . R&R flag set Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 03/24/2021. (rcb) Modified to edit docket text (vacate language) on 4/9/2021 (rcb). (Entered: 03/24/2021)
04/05/2021	6	PLAINTIFF'S AMENDED COMPLAINT WITH ATTACHMENT (A-H) against E GARY EARLY , filed by ELIAS MAKERE. (rcb) # 1 Table of Contents (Entered: 04/06/2021)
04/05/2021	7	PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S RECOMMENDED ORDER OF DISMISSAL by ELIAS MAKERE. (rcb) Modified to edit title (convert to motion) on 4/9/2021 (rcb). (Entered: 04/06/2021)
04/05/2021	8	PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING WITH ATTACHMENTS by ELIAS MAKERE. (rcb) (Entered: 04/06/2021)
04/05/2021	9	PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING by ELIAS MAKERE (rcb) (Entered: 04/06/2021)
04/06/2021		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 8 PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING WITH ATTACHMENTS, 7 PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S RECOMMENDED ORDER OF DISMISSAL, 9 PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO UTILIZE ELECTRONIC FILING, 6 PLAINTIFF'S AMENDED COMPLAINT WITH ATTACHMENT (A-H) Referred to MARTIN A FITZPATRICK. (rcb)**Filing Fee Received-awaiting processing** (Entered: 04/06/2021)
04/06/2021		Filing fee: \$ 402.00, receipt number FLN400041470. Fee status updated to <i>paid</i> . (rcb) (Entered: 04/07/2021)
04/09/2021	10	ORDER. Plaintiff's objection, ECF No. 7 , construed as a motion for reconsideration, is GRANTED. The Report and Recommendation, ECF No. 5 , is VACATED. Plaintiff's motion requesting leave to file documents in this Court electronically, ECF No. 8 , is DENIED. Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/09/2021. (rcb) (Entered: 04/09/2021)
04/09/2021	11	SECOND REPORT AND RECOMMENDATION. R&R flag set. It is respectfully RECOMMENDED that Plaintiff's amended complaint, ECF No. 6 , be DISMISSED because the Defendant is entitled to absolute judicial immunity. Internal deadline for referral to district judge if objections are not filed earlier: 5/7/2021 . Signed by MAGISTRATE JUDGE MARTIN A FITZPATRICK on 04/09/2021. (rcb) (Entered: 04/09/2021)
04/26/2021	12	REQUEST TO ISSUE SUMMONS by ELIAS MAKERE (rcb) (Entered: 04/27/2021)
04/28/2021		ACTION REQUIRED BY MAGISTRATE JUDGE: Chambers of MAGISTRATE JUDGE MARTIN A FITZPATRICK notified that action is needed Re: 12 REQUEST TO ISSUE SUMMONS Referred to MARTIN A FITZPATRICK. (rcb) (Entered: 04/28/2021)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 05

PAGES 0068 - 0072

SHORT TITLE: Omnibus Order

DATE ENTERED: 4/9/2021

DOC TYPE: Magistrate Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 10

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ELIAS MAKERE, FSA, MAAA,

Plaintiff,

vs.

Case No. 4:21cv96-MW-MAF

HON. E. GARY EARLY, ALJ,

Defendant.

_____ /

ORDER

Plaintiff, proceeding pro se, sought to initiate this case by submitting a civil rights complaint under 42 U.S.C. § 1983, ECF No. 1, and an application for proceeding without payment of the filing fee, ECF No. 2.

Because neither document was properly signed, Plaintiff was ordered to either file an amended in forma pauperis motion or pay the filing fee. ECF No. 4. In addition, Plaintiff was required to file an amended complaint. *Id.*

When Plaintiff failed to do so by the deadline provided, a Report and Recommendation was entered recommending the case be dismissed.

ECF No. 5.

Plaintiff has now filed an objection to that recommendation, ECF No. 7, along with an amended complaint, ECF No. 6. The docket also shows that Plaintiff has now paid the \$402.00 filing fee. In light thereof, Plaintiff's objection, ECF No. 7, is treated as a motion for reconsideration and is granted. The Report and Recommendation, ECF No. 5, will be vacated and Plaintiff's amended complaint will be reviewed.

In addition to filing the amended complaint, Plaintiff has filed a motion requesting permission to file documents in this case electronically. ECF No. 8. Plaintiff acknowledges that Local Rule 5.1 requires all documents filed by pro se litigants to have a handwritten signature. *Id.* at 2. Nevertheless, Plaintiff requests permission to file documents electronically through PACER so he can use an electronic signature and ease the financial burden of printing copies, mailing costs, and the like. *Id.* at 4. Plaintiff's motion is supported by an affidavit, ECF No. 9, and Exhibit A, ECF No. 8 at 9-14.

First, all persons have a fundamental right of access to the courts; it must be adequate, effective, and meaningful. Lewis v. Casey, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606 (1996)). Such access has never been required to be free. Roller v. Gunn, 107 F.3d 227, 231 (4th

Cir. 1997) (explaining there is no right of “free access to federal courts” nor is there “unlimited access to them” either); Hampton v. Hobbs, 106 F.3d 1281, 1285 (6th Cir. 1997) (noting that “prisoners asserting civil claims in federal court have never been guaranteed a ‘free ride.’”). Litigation involves some costs, including time, energy, and resources. While a person who demonstrates financial burden may be awarded in forma pauperis status and not required to pay a filing fee, that statute (28 U.S.C. § 1915) does not eliminate the other costs of litigation. Notably, although Plaintiff complains of the anticipated costs of litigation, he has, in fact, paid the \$402.00 filing fee.

Second, the Local Rules of this Court require use of the electronic filing system (pacer) by attorneys, but documents filed by pro se parties must be submitted “in hard copy.” N.D. Fla. Loc. R. 5.4(A). The equal protection principle generally requires a rational basis for differential treatment of like-situated persons. Attorneys and pro se litigants are not like-situated, and there is a rational basis for treating them differently.

An attorney who is admitted to this Court’s bar (and who, thus, may file documents electronically, without prior review by the Clerk’s office for compliance with the rules) has successfully graduated from approximately

2. The Report and Recommendation, ECF No. 5, is **VACATED**.

3. Plaintiff's motion requesting leave to file documents in this Court electronically, ECF No. 8, is **DENIED**.

DONE AND ORDERED on April 9, 2021.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 06

PAGES 0073 - 0082

SHORT TITLE: Second Report & Recommendation

DATE ENTERED: 4/9/2021

DOC TYPE: Magistrate Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 11

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ELIAS MAKERE, FSA, MAAA,

Plaintiff,

vs.

Case No. 4:21cv96-MW-MAF

HON. E. GARY EARLY, ALJ,

Defendant.

_____ /

SECOND REPORT AND RECOMMENDATION¹

In a separate Order entered this day, the prior Report and Recommendation was vacated. The pro se Plaintiff has filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. ECF No. 6 at 1. Although Plaintiff was required to submit his amended complaint "on the form used in this Court," see ECF No. 4 at 2, he did not do so. The Local Rules of this Court provide that a pro se litigant must file a civil rights complaint on an approved form which will be provided "without charge from

¹ The first Report and Recommendation, ECF No. 5, recommended that this case be dismissed for failure to prosecute. *Id.* Thereafter, Plaintiff belatedly filed an amended complaint and paid the filing fee. In light thereof, the original Report and Recommendation was vacated.

the Clerk” of this Court. N.D. Fla. Loc. R. 5.7(A). The Rule also states that the “Court need not - and ordinarily will not - consider a petition, motion, or complaint that is not filed on the proper form.” *Id.* Notwithstanding that deficiency, Plaintiff’s amended civil rights complaint, ECF No. 6, has been reviewed to determine if service should be directed.

Plaintiff brings this lawsuit against the Honorable E. Gary Early, an Administrative Law Judge with the Florida Division of Administrative Hearings [DOAH]. ECF No. 6 at 4-5. Plaintiff alleged that in late June 2017, he filed a complaint against his former employer (Allstate Insurance Company) with the Florida Commission on Human Relations [FCHR], alleging employment discrimination. *Id.* at 6. He states that the FCHR² concluded that “race and sex were the basis of Plaintiff’s complaint.” *Id.* The case was transmitted to DOAH, and Plaintiff alleges that “[a]fter a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff’s case.” *Id.*

² An attachment to Plaintiff’s amended complaint reveals the FCHR issued a “no reasonable cause” determination, concluding that there was no “evidence of discrimination” and, instead, that Plaintiff “was terminated for failing his exam and not securing a non-actuarial position.” ECF No. 6 at 25 (Ex. D).

Plaintiff contends that the facts developed in his case were “heavily” in his favor and that he had a “smoking gun” to show Allstate’s reason for terminating Plaintiff’s employment was a pretext.” *Id.* at 7. He further alleges that he presented facts which showed “a textbook case of employment discrimination.” *Id.*

However, Plaintiff alleges that during a hearing on November 3, 2018, Defendant Early suppressed evidence and “ordered Plaintiff to cease questioning.” ECF No. 6 at 7. Plaintiff says that after the hearing, he asked “for a redress of the cessation order.” *Id.* at 8. Presumably, the request was denied. Plaintiff then contends that a hearing transcript was missing a “crucial page,” which Plaintiff asserts demonstrates that “Defendant willfully and knowingly hid evidence.” *Id.*

On April 19, 2019, Defendant Early then entered a Recommended Order [“RO”] which “excluded Plaintiff’s sex discrimination charge.” *Id.* at 8. Plaintiff contends the Defendant also made “false” statements throughout the RO, *id.* at 9, which Plaintiff alleges were known to be false because Plaintiff did raise a sex discrimination charge against Allstate. *Id.*

at 9-10.³ On June 27, 2019, the FCHR issued its Final Order and adopted Defendant's ruling. *Id.* at 9. Plaintiff contends that "the force and effect of Defendant's statement made the FCHR change its tune." *Id.* at 9.

Plaintiff alleges that Defendant hid evidence, committed perjury, and in so doing, "denied Plaintiff access to the state's court system" in violation of the First Amendment. ECF No. 6 at 10-11. Further, Plaintiff contends that Defendant violated his right to due process, *id.* at 11, and his right to equal protection. *Id.* at 12. Finally, Plaintiff alleges that Defendant violated the Supremacy Clause and committed perjury, and he argues that judicial immunity is not applicable in this case. *Id.* at 12-13. As relief, Plaintiff seeks punitive and compensatory damages, injunctive relief, and a declaratory judgment. *Id.* at 15.

Well established law provides "absolute immunity" to a judge who is acting within his or her judicial capacity, and such "immunity is not reserved for Article III judges only." Stevens v. Osuna, 877 F.3d 1293, 1301 (11th Cir. 2017). "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed

³ Plaintiff alleged that Defendant's statements "were a known lie (a big lie - in fact)." ECF No. 6 at 10.

within their judicial jurisdiction.” Cleavinger v. Saxner, 474 U.S. 193, 199, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985) (quoted in Stevens, 877 F.3d at 1301). “The immunity applies even when the judge’s conduct ‘was in error, was done maliciously, or was in excess of his authority” Stump v. Sparkman, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978) (quoted in Stevens, 877 F.3d at 1301).

In Stump v. Sparkman, the Supreme Court set “forth a two-part test for determining when a judge is entitled to immunity from money damages liability when sued under Section 1983.” Simmons v. Conger, 86 F.3d 1080, 1084 (11th Cir. 1996) (citing Stump, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978)). Step one of the test considers “whether the judge dealt with the plaintiff in a judicial capacity” and step two looks at “whether the judge acted in the ‘clear absence of all jurisdiction.’” Simmons, 86 F.3d at 1084-1085 (quoting Stump, 435 U.S. at 362, 98 S. Ct. at 1107). Plaintiff’s allegations make clear that Defendant Early was acting in his capacity as an Administrative Law Judge in a case assigned to him. He was not acting in the absence of jurisdiction because DOAH has subject matter jurisdiction over employment discrimination cases.

There is no allegation that Judge Early dealt with Plaintiff in a purely private capacity. Thus, Plaintiff's claims against the Defendant is barred by absolute judicial immunity.

Plaintiff has argued that the Defendant is not entitled to judicial immunity because "he is an administrative judge." ECF No. 6 at 13. That argument is incorrect. Absolute judicial immunity has been extended to state court judges, Pierson v. Ray, 386 U.S. 547, 554, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), federal administrative law judges and federal hearing examiners, Butz v. Economou, 438 U.S. 478, 514, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978), federal immigration judges, Stevens, 877 F.3d at 1302, and to justices of the peace. Turner v. Raynes, 611 F.2d 92, 96-97 (5th Cir. 1980). Relying on analysis of the Supreme Court in Cleavinger v. Saxner, 474 U.S. 193, 202, 106 S. Ct. 496, 501, 88 L. Ed. 2d 507 (1985), the Eleventh Circuit Court of Appeals has held that a state ALJ is "functionally comparable to that of a trial judge or a federal ALJ" and, thus, entitled to absolute immunity from suit. Smith v. Shook, 237 F.3d 1322, 1325 (11th Cir. 2001) (concluding that "absolute immunity is necessary for

state ALJ's to ensure that they can perform their functions without harassment or intimidation").

The Court's explanation as to the reasons for absolute immunity are particularly instructive and applicable in this case: "absolute immunity is intended 'for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.'" Pierson v. Ray, 386 U.S. 547, 554, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967) (quoted in Stevens, 877 F.3d at 1301). "A judge's 'errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.'" 877 F.3d at 1301 (quotation omitted); see also Forrester v. White, 484 U.S. 219, 226-27, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988) ("If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract

from independent and impartial adjudication.” (citation omitted)). Here, Plaintiff is seeking to sue the Defendant because of rulings made in Plaintiff’s prior litigation. However, a party is entitled to litigate a claim on the merits only once, in a single lawsuit. If the party is dissatisfied with the judge’s handling of the lawsuit, the party may appeal. “But when the case is over, it is over.” Silva v. Swift, No. 4:19cv286-RH-MJF, 2020 WL 3287884, at *1 (N.D. Fla. June 18, 2020). The losing party is not entitled to bring a new lawsuit complaining of the first judge’s handling of the first lawsuit. That is precisely “what the plaintiff is improperly attempting to do here.” Silva, 2020 WL 3287884, at *1. For the reasons explained above, Plaintiff’s case cannot go forward.

Furthermore, Plaintiff is advised that “absolute immunity is not merely a defense to liability: it is an immunity from suit and from ‘the other burdens of litigation’ that ‘is effectively lost if a case is erroneously permitted to go to trial.’” Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985) (cited in Stevens, 877 F.3d at 1304). Thus, it matters not that Plaintiff also seeks declaratory and injunctive relief. This case must be dismissed because the Defendant is entitled to absolute judicial immunity.

RECOMMENDATION

In light of the foregoing, it is respectfully **RECOMMENDED** that Plaintiff's amended complaint, ECF No. 6, be **DISMISSED** because the Defendant is entitled to absolute judicial immunity.

IN CHAMBERS at Tallahassee, Florida, on April 9, 2021.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A copy of the objections shall be served upon all other parties. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court's internal use only and does not control. If a party fails to object to the Magistrate Judge's findings or recommendations as to any particular claim or issue contained in this Report and Recommendation, that party waives the right to challenge on appeal the District Court's order based on the unobjected-to factual and legal conclusions. See 11th Cir. Rule 3-1; 28 U.S.C. § 636.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 07

PAGES 0083 - 0096

SHORT TITLE: Plaintiff's Objections to Second Report &
Recommendation

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

HON. E. GARY EARLY, ALJ

Defendant

)
)
)
)
)
)
)

Case No (LT)
4:21-cv-00096-MW-MAF

**PLAINTIFF'S OBJECTION TO THIS HONORABLE COURT'S
RECOMMENDED ORDER OF DISMISSAL**

Plaintiff, ELIAS MAKERE, on this 21st day of April 2021, respectfully objects to this Honorable Court's "*Report and Recommendation*" (hereinafter "That Order")^{1/}. Plaintiff proffers the following in good faith, and only on the grounds permissible.

Key Points:

A.) Grounds 28 USC §636(b) (1) (A) ; 28 USC §636(b) (1) (C)

B.) Points Misleading, Unauthorized, Unwarranted

Table of Contents:

Context	3 rd Page
Introduction	4 th Page
Objections	8 th Page
Certificates	12 th Page

*Let it be wrong for a vessel to
ensnare its passengers in the
strict formalities of ship-borne
rules, then fly off on the winds
of unauthorized plans.*



Background: Plaintiff sued a judge for the judge's injurious perjury
Problem: This magistrate judge - *sua sponte* - recommended dismissal
Request: This district judge denies dismissal

28 USC §636(b) (1) (A) | Jurisdiction, Powers, and Temporary Assignment

"(A) a judge may designate a **magistrate judge** to hear and determine any pretrial matter pending before the court, **except... to involuntarily dismiss an action**. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."

Rule 6(d) | Fed. R. Civ. P. | Computing and Extending Time...

"When a party may or must act within a specified time after being served and service is made [by mail], **3 days are added...**"

Rule 72(b) (2) | Fed. R. Civ. P. | Magistrate Judges: Pretrial Order

"(2) **Objections**. **Within 14 days** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations."

Precedence

- 2:14-cv-00437-SPC-NPM - USFLMD (12/10/20)
 - 2:18-cv-00781-SPC-MRM - USFLMD (9/18/20)
 - 2:19-cv-00054-SPC-NPM - USFLMD (9/29/20)
 - 8:16-cv-02899-CEH-AAS - USFLMD (11/25/20)
 - 6:18-cv-01823-GAP-LRH - USFLMD (2/10/21)
- USFLMD recently sustained written objections
- 4:20-cv-00292-MW-HTC - USFLND (10/1/20)
 - 1:20-cv-00267-MW-GRJ - USFLND (3/23/21)
- This Court recently sustained objections

Abbreviations

- [RO##] - Page ## from That Order
- [TD##] - Page ## from 'Those Directions'
- USFLMD - US District Court, Florida, Middle District
- USFLND - US District Court, Florida, Northern District

INTRODUCTION

I. Underlying Facts

1. The underlying facts of the instant case are as follows.
2. Plaintiff's former employer, Allstate Insurance Company, discriminated against him on a number of bases. Most prominently: race and sex.
3. The employer's unlawful conduct involved (among other things):
 - a. racist dolls;
 - b. racist characterizations;
 - c. recurring, unwanted date requests;
 - d. disparate pay;
 - e. discriminatory denial of the work-from-home privilege;
 - f. forcing Plaintiff to spend \$1,025 for an exam fee while never doing the same to Plaintiff's similarly-situated comparators;
 - g. retaliating for filing an internal complaint;
 - h. terminating Plaintiff for reasons it never applied to others; and
 - i. retaliating against Plaintiff for filing a lawsuit;

The most egregious of these acts are supported by concrete evidence. Evidence – importantly – that is not subject to interpretation.

4. Unfortunately, these facts ran counter to the centuries' long teachings of the Ku Klux Klan. So, when presented with this reality, Defendant (a state officer) set out to deprive Plaintiff of his constitutional rights. Doing so – importantly – by breaking the very laws he was sworn to uphold. Thereby injuring Plaintiff, and necessitating this action.
 - a. It is important to add that the unlawful acts which Plaintiff complains of were neither discretionary nor within Defendant's jurisdictional powers.

II. Immediate Procedural History

5. On-or-around January 31, 2021, Plaintiff sued Defendant under the *Ku Klux Klan Act of 1871* (42 USC §1983). As an out-of-county *pro se* party, he mailed his documents to the Court; which received it in February.
6. His documents included:
 - a. a civil cover sheet^{2/};
 - b. a court-issued complaint form^{3/};
 - c. a court-issued civil indigency form (Doc No 2)^{4/}; and
 - d. a free-form complaint (Doc No 1)^{5/}.
7. Shortly thereafter, the Court determined that Plaintiff's complaint was unactionable because it lacked a handwritten signature. Thus, this tribunal ordered Plaintiff (see Doc No 4; hereinafter "Those Directions")^{6/} to replace his electronic signature with a physical one. Those Directions also instructed Plaintiff to resolve the filing fee.
8. On March 30, 2021, Plaintiff obliged.
 - a. He signed and returned his free-form complaint (Doc No 6); and
 - b. He paid the filing fee (Doc No 9).

Out of deference for this Court's strict formalities, Plaintiff made no other changes^{7/}.

III. Addressing Misleading Submissions

9. Contrary to That Order, this Honorable Court never directed Plaintiff to sign & return the court-issued complaint form [RO01]. Those Directions made no such mention of it. The only form they mentioned was the application for *forma pauperis* (see [TD01], [TD02], [TD03]) (highlights added)^{8/}:

"Moreover, Plaintiff's prior motion, ECF No. 2 [*forma pauperis*], was not on the form used in this Court"

- 'Those Directions' | Page 2 | USFLND | 2/22/21

"1. The Clerk of Court shall forward to Plaintiff the form used in this Court for requesting leave to proceed in *forma pauperis*."

2. Plaintiff shall have until **March 22, 2021**, to file an amended civil rights complaint, which contains his original signature, and an amended in *forma pauperis* motion on the form provided to him with this Order."

- 'Those Directions' | Page 3 | USFLND | 2/22/21

10. The Clerk seemed to recognize this, too. As she never mailed a court-issued civil rights complaint form (Pro Se 15). She only sent Plaintiff the court-issued form for leave to proceed in *forma pauperis* - as instructed by the Court.

11. In sum, the magistrate unfortunately submitted misleading information upon rearranging his own words ("Plaintiff was required to submit his amended complaint "on the form used in this Court"" [RO01]).

12. Bottom line: Those Directions never required Plaintiff to use the court-issued civil rights form (Pro Se 15). They required Plaintiff to resolve the filing fee and replace his electronic signatures. He did that.

13. That Order was also misleading in its omission of a key part of Plaintiff's Complaint. Under the heading "Judicial Immunity" (Doc No 1) were the following two sentences (highlights added):

"58. First, Defendant is not a judicial officer. Although he is a judge per se, he is an administrative judge. A designation that does not afford him the immunities reserved for judicial officers.

59. Secondly, and perhaps more importantly, Defendant broke the law (§92.525 FS - perjury). Judicial Immunity does not cover legal violations."

- Verified Civil Complaint | USFLND | 4:21-cv-00096

14. That Order left out the second sentence (ie, Paragraph 59). That sentence, of course, was Plaintiff's operative argument. Judicial Immunity does not attach because Defendant broke the law (on an issue he had no discretion/jurisdiction over).

a. Specifically, Defendant perjured himself. A crime that injured Plaintiff, and violated the constitutional rights that the government afforded him. No reasonable peer can attest that Defendant was authorized - discretionarily or otherwise - to commit crimes while on the bench.

15. As the federal system holds, the key inquiry into a 42 USC §1983 lawsuit is the unlawful act - not the statutorily-cloaked actor. The US Supreme Court explained as much in Forrester v White, 484 US 219 S. Ct. 538 L. Ed. 2d 555 (1988):

"Here, as in other contexts, immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches."

16. Bottom line: That Order launched itself upon misleading this proceeding about Plaintiff's prevailing argument against immunity.

OBJECTIONS

IV. Objection #1: Hijacked Complaint

17. To put it briefly, this Court cannot hijack a complaint in an effort to steer this cause into an abyss of discarded cases. In Limone v Condon, 372 F.3d 39 (1st Cir. 2004), the United States warned that precision must be accorded to flights towards dismissal:

"It is certainly true that the manner in which a right is defined can make or break a qualified immunity defense"

...

"Courts must be equally careful, however, not to permit a defendant to hijack the plaintiff's complaint and recharacterize its allegations so as to minimize his or her liability."

- *Limone v Condon*, 372 F.3d 39 (1st Cir. 2004)

18. Yet - as detailed in Section III (*supra*) - oversimplifying and mischaracterizing Plaintiff's complaint is exactly what this Honorable Court did.

19. Pursuant to 28 USC §636(b)(1)(C), this Court can "recommit [this] matter to the magistrate judge with instructions" to correct That Order's malformed submissions.

20. Recommitment notwithstanding - and as can be gleaned from Limone - this Court was in no position to have even proffered That Order.

V. Objection #2: Lack of Authority

21. This Honorable Court was in no position to captain this plane into a path of dismissal.

22. For starters, this Court never listed any rule or statute that authorized the magistrate to *sua sponte* recommend dismissal of Plaintiff's §1983 action.

a. The first page does not state a jurisdictional rule for dismissal.
It only recites past acts [RO01].

b. Neither does the second page.

Likewise, it only introduces the reader to the matter [RO02].

c. Nor does the third.

Which just continues its description of the underlying cause.

d. The fourth page does not cite any jurisdictional rule either.

Importantly, this page segues into the Court's reasoning.

e. The same can be said about page five.

A page that merely continues the Court's argument [RO05].

f. Next is the sixth page; which makes no citation to jurisdiction.

It only references case law for its misleading submission.

g. Page seven does no better; offering neither rule nor statute.

Instead, it adds more case law [RO07].

h. Likewise, there are no requisite rules/statutes on page eight.

Only more case law [RO08].

i. The flight plan concludes on the ninth page – where it carries no cited jurisdiction for its recommended path.

It only lists the rules for Plaintiff's objections/appeal.

23. So, after a meticulous review of That Order it must be settled that this Court authored no jurisdiction for its *sua sponte* action.

24. Nevertheless, Plaintiff will take the analysis one step further, and hereby state in the affirmative: no authority exists for That Order.

a. As a proxy, Rule 8(c) Fed. R. Civ. P. (*Affirmative Defenses*) may be used in conjunction with Rule 56 (*Summary Judgment*) to preclude trial. However, neither rule delivers to a magistrate the power to *sua sponte* dismiss an action.

b. Rule 12(b) Fed. R. Civ. P. (*Defenses*) is also worth looking into.

Yet – like Rule 8 – it does not provide a magistrate with the power to *sua sponte* dismiss a case.

c. 28 USC §1915(e) (*Proceedings in Forma Pauperis*) is the only known statute that does grant a magistrate the authority to do such a thing. However, for the instant case, that statute is unavailable.

Reason: Plaintiff is not a *pauper*. Plaintiff paid the filing fee (see ¶8b *supra*).

d. USFLND's Local Rules, of course, also carry weight (pursuant to 28 USC §636(b)(4)). Yet, none of them give a magistrate the power to *sua sponte* dismiss a case.

e. Of greater consequence is 28 USC §636(b)(1)(A), which **explicitly disarms** a magistrate of the power to "involuntarily dismiss an action".

25. In total, without stating authority – and in the face of legislated prohibition – this Court cannot sit disguised in the pilot seat of wayward destiny. Doing so would be *clear error*.

VI. Objection #3: Unwarranted

26. Lastly, it is well-established that immunity is an affirmative defense that the Court is unwarranted to *sua sponte* advocate for.

"[an affirmative defense] is "a personal privilege of a defendant"... and [the district] court "had no right to apply the [unpled defense] *sua sponte*"

– Wagner v Fawcett, 307 F.2d 409, 412 (7th Cir. 1962)

27. Please also accord the 11th Circuit Court of Appeal's decision in Moore v Morgan, 922 F.2d 1553 (11th Cir. 1991); which stated, most pertinently, that it is improper for a court to inject a defense of qualified immunity (highlights added):

"In this civil rights case against a sheriff and the county commissioners of an Alabama county, we reverse the district court because the magistrate judge improperly injected into the case the defense of qualified immunity."

- Moore v Morgan, 922 F.2d 1553 (11th Cir. 1991)

28. Thus, since affirmative defenses are defendant privileges, this Court "had no right" to affix it *sua sponte*.

Summary

29. In all, an unevenly-parked/unauthoritatively-boarded/unwarrantedly captained flight recommendation (such as this one) must be aborted. Thereby allowing a meritorious case to "immediately" take its proper course (please see Edwards v Balisok, 520 US 649, 117 S.Ct. 1584).

CONCLUSION

WHEREFORE, Plaintiff kindly and humbly asks this Honorable Court to reject dismissal; and in its stead: permit process service (Rule 4 Fed. R. Civ. P.). Whereby Defendant will have proper chance to atone/self-govern.

Dated this 21st day of April 2021.

Respectfully submitted,



ELIAS MAKERE, FSA, MAAA, Plaintiff
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Jacksonville, FL 32224
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E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
Get **Booked Up** on Justice!

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 (contents); thus complying with the font requirements of Local Rule 5.1(C) USFLND.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April 2021, I mailed the foregoing (via USPS) to the Clerk of Courts. Who will docket this paper for public use.

Endnotes:

^{1/} 'That Order' = Doc No 11; USFLND; ^{5/} "Verified Civil Complaint".
4:21-cv-00096-MW-MAF; 4/9/21.

^{2/} JS44 (Rev. 09/19) Civil Cover Sheet ^{6/} 'Those Directions' = Doc No 4;
USFLND; 4:21-cv-00096-MW-MAF;
2/22/21.

^{3/} Pro Se 15 (Rev. 12/16) Complaint ^{7/} Plaintiff updated the signature
for Violation of Civil Rights (Non- date, though (from 1/31/ to 3/30).
Prisoner).

Note: this district uses a
different version of the
document that Plaintiff sent.

^{4/} AO 240 (Rev. 07/10) Application to
Proceed in District Court Without
Prepaying Fees or Costs (Short Form).

Note: this district uses a
different version of the
document that Plaintiff sent.

^{8/} Please note that the quote cites an
electronic docket entry on PACER
("ECF No. 2"). At the time, Plaintiff
had not been granted PACER's 'one free
look' (see USFLND Local Rule 5.4; see
this Court's denial for electronic
filing). Thus, it would have cost
plaintiff over \$4 to download his own
file. A file that this Honorable Court
combined with another one (thereby
bumping the page numbers). Plaintiff
proffers this endnote to showcase the
unreasonable burden of purchasing his
own property. As such, Plaintiff had
to rely solely on the document that
this Honorable Court mailed to him.

SERVICE LIST

Elias Makere, FSA, MAAA

P: 904.294.0026

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3709 San Pablo Rd S #701

Jacksonville, FL 32224

(plaintiff)

An electronic copy of this file can be found here:

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(text-searchable)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 08

PAGES 0097 - 0098

SHORT TITLE: Order Accepting Second Report & Recommendation

DATE ENTERED: 4/29/2021

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 14

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA,
MAA,

Plaintiff,

v.

Case No.: 4:21cv96-MW/MAF

HON. A. EARL GRAY, ALJ,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation, ECF No. 11, and has also reviewed *de novo* Plaintiff's objections, ECF No. 13. Accordingly,

IT IS ORDERED:

The report and recommendation, ECF No. 11, is **accepted and adopted**, over the Plaintiff's objections, as this Court's opinion. The Clerk shall enter judgment stating, "Plaintiff's amended complaint is dismissed because Defendant is entitled to absolute immunity." The Clerk shall close the file.

SO ORDERED on April 29, 2021.

s/Mark E. Walker
Chief United States District Judge

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 09

PAGES 0099 - 0100

SHORT TITLE: Judgment

DATE ENTERED: 4/29/2021

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. 4:20cv192-MW/MJF

ELIAS MAKERE, FSA,
MAA,

Plaintiff,

V

HON. A. EARL GRAY, ALJ,

Defendant.

JUDGMENT

Plaintiff's amended complaint is dismissed because Defendant is entitled to absolute immunity.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

April 29, 2021
DATE

s/Ronnell Barker
Deputy Clerk: Ronnell Barker

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 10

PAGES 0101 - 0103

SHORT TITLE: Plaintiff's Motion to Amend Judgment

DATE ENTERED: 5/28/2021

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

HON. E. GARY EARLY, ALJ

Defendant

)
)
)
)
)
)
)

Case No (LT)
4:21-cv-00096-MW-MAF

PLAINTIFF'S MOTION TO AMEND JUDGMENT

Plaintiff, ELIAS MAKERE, on this 25th day of May 2021, respectfully asks this Honorable Court to amend the judgment that it entered on April 30, 2021. Pursuant to Rule 59 Fed. R. Civ. P., Plaintiff wishes for this tribunal to state whether the pre-trial dismissal was entered with-or-without prejudice.

In Nemaizer v Baker, 793 F.2d 58 (2d Cir. 1986), the Second Circuit held that district courts must aim to preserve the finality of judgment. Such a declaration will serve that purpose.

CONFERRAL

Given the current posture of this lawsuit - in which Defendant has yet to be summoned - Plaintiff has not been able to gauge opposition to this request.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to enter an Order Stating whether its Judgment was entered with-or-without prejudice.

Dated this 25th day of May 2021.

Respectfully submitted,

ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
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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 (contents); thus complying with the font requirements of Local Rule 5.1(C) USFLND.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May 2021, I mailed the foregoing (via USPS) to the Clerk of Courts. Who will docket this paper for public use.

Elias Makere (5/25/21)

Endnotes:

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 11

PAGES 0104 - 0106

SHORT TITLE: Plaintiff's Motion for Relief from Judgment

DATE ENTERED: 5/28/2021

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 19

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA

Plaintiff

v.

HON. E. GARY EARLY, ALJ

Defendant

)
)
)
)
)
)
)

Case No (LT)
4:21-cv-00096-MW-MAF

PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT

Plaintiff, ELIAS MAKERE, on this 25th day of May 2021, respectfully asks this Honorable Court to relieve Plaintiff from the judgment that it entered on April 30, 2021. Pursuant to Rule 60(b)(3) Fed. R. Civ. P., the decision was corrupted by two factors.

First, the ruling was based on **false grounds**. In short, the magistrate claimed that this tribunal directed Plaintiff to file his complaint on a court-issued form. The Court gave no such instructions. Moreover, Plaintiff followed this Honorable Court's directions to submit the filing fee.

Second, the ruling was **unauthorized**. The magistrate - in recommending dismissal - failed to cite any authority for his *sua sponte* action (please see 28 USC §636(b)(1)(A), 28 USC §1915(e)).

These two factors constitute a **fraud** upon this court.

CONFERRAL

Given the current posture of this lawsuit - in which Defendant has yet to be summoned - Plaintiff has not been able to gauge opposition to this request.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to relieve Plaintiff from the judgment entered on April 30, 2021.

Dated this 25th day of May 2021.

Respectfully submitted,

ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May 2021, I mailed the foregoing (via USPS) to the Clerk of Courts. Who will docket this paper for public use.

Elias Makere (5/25/21)

Endnotes:

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 12

PAGES 0107 - 0113

SHORT TITLE: Notice of Appeal

DATE ENTERED: 6/4/2021

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	<u>Case No (LT)</u>
Plaintiff/Appellant	)	4:21-cv-00096-MW-MAF
	)	
v.	)	
	)	
HON. E. GARY EARLY, ALJ	)	
Defendant/Appellee	)	

PLAINTIFF'S NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff/Appellant, ELIAS MAKERE, on this 4th day of May 2021, respectfully appeals to the 11th Circuit Court of Appeals, the following orders:

<u>Dkt</u>	<u>Title</u>	<u>Date Rendered</u>
14	"Order Accepting Report and Recommendation"	4/29/2021
15	"Judgment"	4/29/2021

Nature of appealed order ≈ final order^{1/}

Two conformed copies of each are attached in accordance with Rule 3(a) Fed. R. App. P.

(Please see Order #1 and Order #2, respectively)

Respectfully submitted,
/s/ Elias Makere
ELIAS MAKERE, FSA, MAAA, Plaintiff
3709 San Pablo Rd. S # 701
Jacksonville, FL 32224
P: (904) 294-0026
E: justice.actuarial@gmail.com
W: TextBookDiscrimination.com
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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 Local Rule 1.05(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May 2021, I filed the foregoing with the Clerk of Courts by mailing all parts to the United States District Court at 111 N. Adams St., Tallahassee, FL, 32301.

/s/ Elias Makere

Endnotes:

^{1/} please see 28 USC §1291

SERVICE LIST

Honorable E. Gary Early, ALJ

E: gary.early@doah.state.fl.us
P: 850.488.9675 x5462
F: 850.921.6847

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

(defendant)

ORDER #1

United States District Court, Florida, Northern District
4:21-cv-00096-MW-MAF

4/29/2021

[14]

"Order Accepting report and Recommendation"

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA,
MAA,

Plaintiff,

v.

Case No.: 4:21cv96-MW/MAF

HON. A. EARL GRAY, ALJ,

Defendant.

ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation, ECF No. 11, and has also reviewed *de novo* Plaintiff's objections, ECF No. 13. Accordingly,

IT IS ORDERED:

The report and recommendation, ECF No. 11, is **accepted and adopted**, over the Plaintiff's objections, as this Court's opinion. The Clerk shall enter judgment stating, "Plaintiff's amended complaint is dismissed because Defendant is entitled to absolute immunity." The Clerk shall close the file.

SO ORDERED on April 29, 2021.

s/Mark E. Walker
Chief United States District Judge

ORDER #2

United States District Court, Florida, Northern District
4:21-cv-00096-MW-MAF

4/29/2021

[15]
"Judgment"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. 4:20cv192-MW/MJF

ELIAS MAKERE, FSA,
MAA,

Plaintiff,

V

HON. A. EARL GRAY, ALJ,

Defendant.

JUDGMENT

Plaintiff's amended complaint is dismissed because Defendant is entitled to absolute immunity.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

April 29, 2021
DATE

s/Ronnell Barker
Deputy Clerk: Ronnell Barker

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 13

PAGES 0114 - 0120

SHORT TITLE: Opinion Vacating & Remanding

DATE ENTERED: 12/30/2021

DOC TYPE: District Court Order

TRIBUNAL: US Court of Appeals, Eleventh Circuit

CASE NO: 21-11901

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.ca11.uscourts.gov/>

DOC: n/a

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11901

Non-Argument Calendar

ELIAS MAKERE,
FSA MAAA,

Plaintiff-Appellant,

versus

E GARY EARLY,
ADMINISTRATIVE LAW JUDGE,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:21-cv-00096-MW-MAF

Before ROSENBAUM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Elias Makere appeals from the district court’s dismissal of his *pro se* amended complaint alleging violations of his civil rights under 42 U.S.C. § 1983, on the ground that the defendant was entitled to absolute judicial immunity. Makere argues that the district court erred when it *sua sponte* dismissed his complaint against Judge E. Gary Early—who had ruled previously against Makere in an employment discrimination case—because Makere paid the filing fee for his complaint, Judge Early had not been served process, and the district court lacked the authority to assert absolute judicial immunity on behalf of Judge Early. After *de novo* review,¹ we agree with Makere that the district court erred by *sua sponte* dismissing his complaint at this stage.²

¹ The record is unclear as to what rule or statute the district court was relying upon when it *sua sponte* dismissed Makere’s complaint—it appears that the district court may have been proceeding under 28 U.S.C. § 1915(e)(2) or possibly Federal Rule of Civil Procedure 12(b)(6). *Sua sponte* dismissals under § 1915(e)(2) or Rule 12(b)(6) are reviewed *de novo*. *Hughes v. Lott*, 350 F.3d 1157, 1159–60 (11th Cir. 2003) (explaining that we review a district court’s *sua sponte* dismissal under § 1915(e)(2) *de novo*); *Timson v. Sampson*, 518 F.3d 870, 872 (11th Cir. 2008) (explaining that we review *de novo* a Rule 12(b)(6) dismissal).

² Because we vacate and remand this case due to the district court’s procedural error, we deny as moot Makere’s accompanying motion to take judicial notice of twelve public records relating to the merits of his case.

In February 2021, Makere filed a complaint in the U.S. District Court for the Northern District of Florida against Judge Early, along with an application to proceed *in forma pauperis* (“IFP”). Consequently, the case was referred to a magistrate judge for further processing.³ The magistrate judge then issued an order explaining that Makere’s complaint and IFP motion could not be considered because they failed to comply with the local rules—both documents lacked the required handwritten signature and the IFP motion was not submitted on the correct form. The magistrate judge directed the clerk’s office to send Makere the correct IFP form and ordered that Makere file an amended complaint and amended IFP motion that complied with the referenced local rules by a certain date. The magistrate judge cautioned that “[f]ailure to comply with this [c]ourt [o]rder may result in a recommendation of dismissal of this action.”

When Makere failed to file the amended pleadings by the specified date, the magistrate judge issued a report and

³ Although the record does not reflect the basis for referring the case to the magistrate judge, we presume that the district court was operating under its Local Rule 5.3, which provides that where a party files a civil action and moves to proceed IFP, “the Clerk must open the case and refer any motion for leave to proceed *in forma pauperis* to an assigned judge.” N.D. Fla. Local Rule 5.3. Furthermore, under the Local Rules, a party seeking to proceed IFP is prohibited from serving process on the defendants until the district court “enters an order authorizing” service. *Id.* Rule 4.1(A). Thus, Judge Early was not served at this time.

recommendation (“R&R”), recommending that the district court dismiss the case for Makere’s failure to comply with its prior order.

Approximately twelve days later, Makere filed an amended complaint, objected to the magistrate judge’s R&R, and, on the following day, paid the filing fee in full. On April 9, 2021, the magistrate judge, recognizing that Makere had filed an amended complaint and paid the filing fee, treated Makere’s objections to the R&R as a motion for reconsideration, which it granted, and vacated the R&R.

Later that same day, however, the magistrate judge issued a second R&R recommending that the district court *sua sponte* dismiss Makere’s complaint because, as an administrative law judge, Judge Early is entitled to absolute judicial immunity. While the magistrate judge did not reference 28 U.S.C. § 1915, presumably—as there is nothing in the record that indicates that the defendant was ever served or filed his own motion to dismiss—the magistrate judge was screening the case pursuant to § 1915, which governs *in forma pauperis* proceedings.⁴ Makere objected to the second R&R,

⁴ Section 1915 provides that in IFP proceedings, the court:

shall dismiss the case . . . if the court determines that . . . (B) the action or appeal—(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915 (e)(2). Although the magistrate judge did not specify the § 1915 provision under which he proceeded, his repeated references to judicial immunity suggest § 1915(e)(2)(B)(iii).

21-11901

Opinion of the Court

5

arguing that he filed an amended complaint and paid the filing fee, and that the magistrate judge failed to cite a rule or statute that authorized the *sua sponte* dismissal of his civil action under these circumstances. The district court adopted the second R&R it in a one-page order over Makere's objections and dismissed the case.

The district court erred when it dismissed this case. After paying the filing fee, Makere was not subject to 28 U.S.C. § 1915,⁵ and the district court could not *sua sponte* dismiss his case under the screening provisions of § 1915. *See* 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii).

Furthermore, to the extent the district court dismissed the complaint *sua sponte* under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim—because again it is not clear what rule or statute the district court was proceeding under—we have prohibited such dismissals where, as here, the defendant has not filed an answer (indeed, here, the defendant was never served), “and the district court failed to provide the plaintiff with notice of its intent to dismiss or an opportunity to respond.” *See American United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir.

⁵While § 1915 applies to non-prisoners proceeding *in forma pauperis*, *see Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004), it does not apply to non-prisoners who have paid the requisite filing fee. *See Farese v. Scherer*, 342 F.3d 1223, 1228 (11th Cir. 2003) (per curiam) (“Logically, § 1915(e) only applies to cases in which the plaintiff is proceeding IFP.”). Makere paid his filing fee, and nothing in the record suggests that Makere was a prisoner.

2007); *Jefferson Fourteenth Assocs. v. Wometco de Puerto Rico, Inc.*, 695 F.2d 524, 527 (11th Cir. 1983). In short, the district court erred in *sua sponte* dismissing the case at this preliminary stage of the proceedings.⁶ Accordingly, we vacate and remand the case.

VACATED AND REMANDED.

⁶ Nothing in this opinion precludes the district court from *sua sponte* dismissing the case on remand if it determines that the complaint fails to state a claim provided that the defendant is served, and the court provides Makere with notice of its intent to dismiss and an opportunity to respond.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 14

PAGES 0121 - 0169

SHORT TITLE: Verified Civil Complaint (Amended)

DATE ENTERED: 1/3/2022

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 26

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against -

HON. E. GARY EARLY, ALJ
(Defendant)

VERIFIED CIVIL COMPLAINT (AMENDED)

42 USC §1983; 42 USC §1985
December 31, 2021

JURY TRIAL DEMANDED

《 》

Deep in the chambers of a state agency, a man cried foul of a corporation's conduct. With due speed, the agency transmitted both of his fundamental sounds to a nearby hearing officer.

An officer, however, with corrupted hearing. An officer, however, who insisted that only one sound was made; eschewing the second for the echoed, stereotyped tales of his fathers.

》

*His perjurious actions were not sound. For they ran afoul of **the man** - and **the grounds** that constituted **the land** which his **forefathers found**.*

《 》

TABLE OF CONTENTS

Foreword	2
Table of Contents	3
I. Nature of Claim	4
II. Jurisdictional Amount	5
III. Parties	5
IV. Venue	5
V. Statutory Prerequisites	6
VI. Statement of Facts	7
VII. Ultimate Facts	16
VIII. Legal Application	17
Certificates (Compliance, Service, Good Faith)	26
Verified Oath	27
Exhibits	28

ABBREVIATIONS

ALJ	Administrative Law Judge
DOAH	Division of Administrative Hearings (Florida)
FCHR	Florida Commission on Human Relations
FS	Florida Statute (2020)
USFLND	US District Court, Florida, Northern District

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

ELIAS MAKERE, FSA, MAAA	)	
Plaintiff,	)	
	)	
vs.	)	Case No (LT): 4:21-cv-00096
	)	Division: (4) Tallahassee
HON. E. GARY EARLY, ALJ	)	
	)	Jury Trial Demanded
Defendant,	)	☒ Yes ☐ No

AMENDED VERIFIED COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 31st day of December 2021 and hereby sues Defendant, the Honorable E. Gary Early, and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 USC §1983 (*Ku Klux Klan Act of 1871* ("§1983")) and 42 USC §1985 ("§1985"), to redress Defendant's unlawful conduct towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Unlawful conduct that infringed on Plaintiff's constitutional rights (1st, 5th, and 14th amendments, etc.).

II. JURISDICTION: AMOUNT

2. Pursuant to 28 USC §2201 and §2202, Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars (\$30,000) - exclusive of interest, costs, and attorney fees (also see 42 USC §1988, Rule 54 Fed. R. Civ. P.).

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County).

4. Upon information and belief, Defendant - at all times material hereto - worked and lived in-or-around Tallahassee, FL (Leon County). Furthermore, Defendant was an administrative law judge (see §120.65 FS) for Florida's Division of Administrative Hearings. A state agency for the territory's executive branch of government (§20.22(2)(f) FS).

IV. JURISDICTION: VENUE

5. Some of Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 FS (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. It appears that no administrative remedies need to be exhausted before initiating this lawsuit. Indeed, DOAH does not have a formal grievance procedure for addressing unlawful conduct of its officers. Thus, the matter before this Honorable Court is ripe for adjudication.

VI. STATEMENT OF THE FACTS

7. Plaintiff fell into Defendant's grasp by virtue of a lawsuit that he filed against a private corporation. A brief review of that case is important for contextualizing Defendant's conduct.

Originating Lawsuit (State Agency, *Makere v Allstate*)

8. On June 30, 2017, Plaintiff filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1), he alleged that his former employer (Allstate Insurance Company) had violated his civil rights on the basis of race **and** sex (see **Exhibit A**).
9. On September 8, 2017, Allstate denied **both** allegations (see **Exhibit B**). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see **Exhibit C**):

"Complainant was terminated solely because he failed his [FSA] exam."

- Allstate Insurance Company, 9/8/17

10. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race and sex were the basis of Plaintiff's complaint (see Exhibit D).
11. On January 19, 2018, Plaintiff filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see Exhibit E). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.
12. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff's case (circa November 13, 2018).
13. Despite the procedural incongruities, the facts continued to develop in Plaintiff's favor; heavily. Facts which included - but were not limited to:
- a. Unwanted date requests; racist dolls, racist characterizations;
 - b. Cursing at Plaintiff for buying a condolence card;
 - c. Death threats; smear campaigns; lethal attacks.
14. Importantly, Allstate made it known that many of its *other* employees had also failed exams. Yet, Allstate never fired any of them. This was the '**smoking gun**' for proving that Allstate's reason for terminating Plaintiff's employment was a pretext.

15. Moreover, at the hearing, three other revelations were cementing:

a. Allstate granted the **work-from-home** privilege to its *other* employees. An accommodation it denied to Plaintiff on countless occasions.

b. Allstate **made Plaintiff pay \$1,025** for an actuarial exam fee; a payment it never required any of its *other* employees to make.

c. Allstate paid Plaintiff an **annual salary that was significantly lower** than his similarly situated comparators.

16. These core facts rendered Plaintiff's lawsuit (against Allstate) a textbook case of employment discrimination. One which - unfortunately - ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).

17. Faced with these probative facts, **Defendant went on the attack.**

Defendant's Unlawful Conduct: (A) Spoliation of Evidence

18. On November 30, 2018, during the moments in which the payment disparity was being revealed (see ¶15b, *supra*), Defendant ordered Plaintiff to cease questioning.

19. After the hearing - around January 9, 2019 - Plaintiff asked Defendant for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation.

20. Two days later (January 11, 2019), Plaintiff received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (¶15b) - and Defendant's cessation order.

a. It is important to note that prior to this date, Plaintiff had never requested a hearing transcript on his case.

i. Plaintiff suspects that Defendant knew this, and was preying on Plaintiff's novice (Plaintiff was *pro se*).

21. Given these circumstances - and upon Plaintiff's information/belief - **Defendant willfully and knowingly hid material evidence.**

Defendant's Unlawful Conduct: (B) Perjury

22. Defendant took it one step further, though, by making a wholesale removal of Plaintiff's sex discrimination charge.

23. On April 19, 2019, Defendant entered his Recommended Order ("RO").

24. The first page of the document had a section titled "Statement of the Issue". Where Defendant excluded Plaintiff's sex discrimination charge (see Exhibit F).

25. The second page had a section titled "Preliminary Statement". Where Defendant continued to exclude Plaintiff's sex discrimination charge. This time, however, Defendant made the fateful declaration that Defendant never complained of sex discrimination prior to the DOAH proceedings (see ¶11, *supra*) (see Exhibit G).

"[Plaintiff], also for the first identifiable time, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination""

- The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

26. Defendant repeated that highlighted line (ie, "for the first identifiable time") several more times throughout his authored RO.

27. **The statement, of course, was false.**

28. Plaintiff did charge Allstate with sex discrimination.

a. He did so in his original charge (6/30/17, see ¶8);

b. Allstate acknowledged the sex basis (9/8/17, ¶9); and

c. The FCHR explicitly ruled on the basis of sex
(12/15/17, ¶10)

29. Nevertheless, the force and effect of Defendant's statement
made the FCHR change its tune - and obstruct justice.

30. On June 27, 2019, the FCHR issued its Final Order ("FO").

In which it listed race as the only protected
characteristic in Plaintiff's complaint (see Exhibit H);
and adopted Defendant's ruling.

31. Defendant's lie had its intended effect.

32. Now, it is important to recognize that Defendant knew he
was lying.

Defendant's Knowledge of the Truth

33. Prior to authoring his RO, Defendant deliberately
acknowledged that the sex discrimination charge was in
Plaintiff's originating complaint.

34. On February 6, 2019, Allstate moved Defendant to take
official recognition of the FCHR's Determination (under
§90.201 FS).^{1/}

35. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."

- The FCHR | 12/15/17 | Florida

36. On February 18, 2019, Defendant granted the motion. Thereby cementing - unequivocally - that he **knew** that Plaintiff charged Allstate with sex discrimination. He said the following (highlights added).

"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."

- The Honorable E. Gary Early, ALJ | February 18, 2019 |
Florida

37. Thus, Defendant's repeated "statements" to the contrary were a known lie (a massive lie - in fact).

38. A lie that impacted the outcome of Plaintiff's lawsuit against Allstate. A case which sought monetary damages (among other things). A case which - due to Defendant's

misconduct - continues to this day (in federal court: 3:20-cv-00905 USFLMD).

Defendant's Corruption and Conspiratorial Bane

39. Defendant enlisted others to help effectuate his illegalities. He did this in two ways (bribing state officials; bribing federal officials).

40. First, Defendant took advantage of state infirmities by bequeathing the FCHR in exchange for violating Plaintiff's constitutional rights.

41. §760.06(4) FS empowers the FCHR to accept gifts and bequests to "help finance its activities". In September 2019, Plaintiff asked the FCHR whether it could accept a respondent's gifts/bequests during an active case. The agency answered with an "emphatic yes" (highlights added)

(Exhibit I):

"the [FCHR] has the power to accept gifts, bequests, grants, or other payments, public or private, to help finance its activities... There are no limitations in the text of the statute... There is no applicable case law suggesting that the Commission cannot accept bequests during the investigation of a claim ... Given that the answer to Petitioner's question of law on whether the Commission can accept gifts during the investigation phase of a claim is such an emphatic yes, there is no doubt to resolve"

- FCHR | Order 19-065 | 12/10/19

42.Plus, in past Annual Reports (§760.06(11) FS), the FCHR has labeled these public/private sources of bribery as "stakeholders".

a.Upon information & belief, Defendant is one such stakeholder.

b.More directly - based upon information & belief - Defendant gave the FCHR (a Tallahassee-based agency) something of value in exchange for violating Plaintiff's constitutional rights.

43.Secondly, Defendant furthered his assault on Plaintiff's constitutional rights by bribing federal officials.

a.Defendant has exhibited a devotion to the unconstitutional rituals of the Ku Klux Klan. Namely, the Klan's practice of subverting the constitutional rights of black people (and black men in particular). In the instant case, Defendant accomplished that by: (a) **destroying evidence** (§18-21); (b) **committing perjury** (§22-38); and (c) **bribing state officers** (§39-42).

44.To be federally specific - and based upon information/belief - Defendant gave Magistrate Judge Martin Fitzpatrick (another Tallahassee judge) something of value in exchange for alienating Plaintiff's 1st Amendment Rights. In April 2021, Mr. Fitzpatrick followed

through by *sua sponte* dismissing this case; doing so without the requisite authority. Fitzpatrick, however, was not the only person that Defendant infected with invidious discrimination.

45. Defendant also bequested Chief Judge Mark Walker (another Tallahassee judge) with something of value in exchange for violating Plaintiff's 1st Amendment Rights - based upon information & belief. In April 2021, Mr. Walker followed suit by rubber-stamping Mr. Fitzpatrick's unauthorized dismissal.

46. Yesterday, on December 30, 2021, the 11th Circuit vacated the dismissal. Doing so because Fitzpatrick/Walker lacked authority.

47. The constant thread between all of these corrupted acts is: (a) Defendant himself; (b) anti-black devotion; (c) illegality; (d) subversion of the constitution; and (e) breaches of authority.

VII. ULTIMATE FACTS

48. Defendant broke the law in his quest to deny Plaintiff relief. Defendant:

- a. **hid evidence** (see ¶18-21);
- b. **committed perjury** (see ¶22-38); and
- c. bequested/**bribed others** to further his crimes (¶39-47).

49. Defendant was not performing a judicial function when he scanned/photocopied the case's transcript.

50. Defendant did not have authority to determine whether Plaintiff charged Allstate with race/sex discrimination; only the FCHR had such subject matter jurisdiction.

- a. Dating back to 1999 (at least), none of DOAH's judges (ie, Defendant's peers) have ever said that they had power to change the basis of an FCHR complaint. Instead, they have repeatedly said the opposite: that they have no jurisdiction over the basis of a civil rights complaint (ie, only the FCHR does).

51. Thereafter, Defendant rallied his companions-of-the-cloth to ratify his lies & obstructions. Altogether, Defendant violated Plaintiff's 1st, 5th, 7th, and 14th amendment rights (plus their Florida equivalents).^{2/} His companions, among others, were Martin Fitzpatrick (another Tallahassee judge) and Mark Walker (another Tallahassee-based judge).

VIII. LEGAL APPLICATION

COUNT I: 1ST AMENDMENT RIGHT TO LEGAL PROTECTION | 42 USC §1983

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VII (Paragraphs 7 through 47).

53. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to petition the State of Florida for a redress of his grievances against Allstate Insurance Company.

54. While acting under the color of state law (§120.569 FS, §120.65 FS), Defendant denied Plaintiff access to the state's court system (see §760.11(7) FS). An act that violated Plaintiff's First Amendment right (1st Amendment - *access to courts*).

55. Defendant did so via **evidence destruction** (§843 FS, §918 FS), **perjury** (§837.06 FS), and **bribery** (§838 FS).

COUNT II: 5TH AMENDMENT RIGHT TO DUE PROCESS | 42 USC §1983

56. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VII (Paragraphs 7 through 47).

57. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to due process. It is well settled that a violation of due process occurs when an

agency excludes/removes a legal basis from a claimant's discrimination charge.

58. Thus, while acting as a state hearing officer (§120.569 FS, §120.65), Defendant violated Plaintiff's constitutional rights (5th Amendment US Constitution) by criminally removing the sex discrimination basis from his complaint.

COUNT III: 7TH AMENDMENT RIGHT TO TRIAL-BY-JURY | 42 USC §1983

59. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VII (Paragraphs 7 through 47).

60. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a trial-by-jury on the matters litigated.

61. While acting as the administrative law judge on Plaintiff's underlying discrimination case (ie, under the '*color of state law*' - §120.569 FS, §120.65 FS) - Defendant prevented Plaintiff from receiving a trial by jury.

a. Such a trial is guaranteed by the US Constitution (7th Amendment) as well as the FL Constitution (Art. I §22).

62. Pursuant to §760.11(7), Plaintiff had a statutory avenue to a jury trial in Florida. *But for* Defendant's illegalities (§18-47), Plaintiff would have enjoyed that constitutional guarantee.

COUNT IV: FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION | 42

USC §1983

63. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VII (Paragraphs 7 through 47).

64. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a fair trial on the matters litigated.

65. While acting as the administrative law judge on Plaintiff's case (ie, under the '*color of state law*' - §120.569 FS, §120.65 FS) - Defendant discriminatorily prevented Plaintiff from attaining the legal protections that Florida afforded other similarly-situated people.

66. Defendant did so when he (a) **suppressed crucial evidence** (§18-21); (b) **perjured himself** (§22-38); and (c) **bribed officials** (§39-47).

67. As such, Defendant violated Plaintiff's constitutional rights to the "equal protection of [§760.11 FS]" (14th Amendment US Constitution).

COUNT V: SUPREMACY CLAUSE | 42 USC §1983

68. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VII (Paragraphs 7 through 47).

69. Defendant's unlawful actions (individually and in total) breached Article VI Section 2 of the US Constitution (ie, the "Supremacy Clause"). He did so when he usurped the federal government's power to protect Plaintiff from 1st, 5th, 7th, and 14th amendment violations.

COUNT VI: PERJURY

70. Plaintiff hereby restates and realleges paragraphs 22 through 38.

71. Defendant - infused with the power bestowed upon him by statute - broke the law (§837.06 FS) **by making a false statement of material fact**. He sold his falsehood to another state agency - which was acting in its official capacity (§22-32).

72. That agency (the FCHR) bought his lie; and thereby cemented Defendant's violation of Plaintiff's constitutional rights (1st Amendment - *access to the court*; 5th Amendment - *due process*; 7th Amendment - *jury trials*; 14th Amendment - *equal protection*; Art. VI §2 - *supremacy clause*).

COUNT VII: DEPRIVATION OF RIGHTS | §1985

73. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 47).

74. Defendant unleashed his repertoire when he deprived Plaintiff of a full & fair opportunity to litigate his underlying case in Florida. Conduct which included - among other things - **evidence destruction** (§18-21), **perjury** (§22-38), and **bribery** (§39-47).

75. In his illegal trek, Defendant has enlisted state officials (§40-42) as well as federal ones (ie, Mr. Fitzpatrick and Mr. Walker) (§43-47) to further his bidding. Bidding which has (a) obstructed the legal process (§48-51); and (b) violated constitutional law (§51).

JUDICIAL IMMUNITY

76. The Doctrine of Judicial Immunity does not attach to this case for several fundamental reasons.

77. First, Defendant was not performing a judicial act. The evidence destruction that he committed while scanning the trial transcript was an administrative task which DOAH's clerical employees could have done. In fact, Florida statutorily prescribes transcript management to be conducted by non-judges (§27.0061 FS, §28.13 FS, §120.65 FS, 28-106.104(3) FAC, 28-106.214(1) FAC).

78. Secondly, the matters that Defendant forced himself onto were outside of his jurisdiction. It is well-settled that the FCHR has sole jurisdiction over determining the subject matter of a discrimination complaint (ie, whether a complaint alleges, race, sex, etc.).

79. Third, and perhaps most importantly, Defendant broke the law (§843/§918 FS - *obstruction*; §837.06 FS - *perjury*; §838 FS - *bribery*). Judicial Immunity does not cover legal violations.^{3/}

INDIVIDUAL CAPACITY

80. Defendant is being sued in his individual capacity only. His misconduct & illegalities do not compute back to the state. This is the case because Florida expressly prohibited his actions (ie, evidence destruction, perjury, bribery).

81. It has been well-established: no one sitting in Defendant's proverbial seat would have been authorized to commit such acts.

82. It must also be stressed: the public never relied on Defendant to commit the acts for which he is being sued.

a. The people of Florida never conferred special power upon Defendant to manage trial transcripts (§18-21). Moreover, the people prohibited him from **destroying evidence** (§843/§918 FS).

b. The people of Florida never conferred special power upon Defendant to decide what the basis of a discrimination charge is (§22-38). Moreover, the people prohibited him from **committing perjury** (§837.06 FS).

c. Lastly, the people of Florida never conferred special power upon Defendant to bribe federal officials (§43-47). Moreover, the people prohibited him from **committing bribery** altogether (§838 FS).

83. Since the people never granted Defendant the power to commit such acts, the people cannot be held responsible for resolving them.

DAMAGES

84. As a direct and proximate result of said acts, Plaintiff has suffered - and continues to suffer - financial loss and loss of earning capacity. Plus, he has suffered (and continues to suffer) mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

85. As a further result of Defendant's constitutional breaches, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

86. Defendant's unlawful acts and discriminatory patterns demonstrate a disdain for Plaintiff's rights; thereby justifying an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant (as well as to add other defendants - ¶44, ¶45).

87. Plaintiff may retain attorneys to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.

a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

88. Pursuant to the 7th Amendment of the US Constitution (also see Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully asks that this Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

89.WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

- b. Declaring that Defendant violated §1983;
- c. Declaring that Defendant violated §1985;
- d. Enjoining Defendant from committing further violations of §1983;
- e. Enjoining Defendant from committing further violations of §1985;
- f. Awarding Plaintiff compensatory damages (back pay, front pay, including interest, lost fringe benefits, etc.) which Defendant's unlawful acts precluded him from obtaining.
- g. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).
- h. Awarding Plaintiff pre-judgment interest.
- i. Awarding Plaintiff punitive damages; and
- j. Awarding such other and further relief as is just, equitable, proper, and sound.

(())

Dated this 31st day of December 2021.

Respectfully submitted,



/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA,

Plaintiff

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

P: (904) 294-0026

E:

justice.actuarial@gmail.com

W: TextBookDiscrimination.com

Get **Booked Up** on Justice!

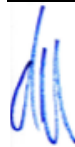
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December 2021, I filed the foregoing with the Clerk of Courts by mailing it (via FedEx) to United States Courthouse; 111 N. Adams St, Ste 322; Tallahassee, FL; 32301.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Rule 11 Fed. R. Civ. P. the foregoing: (1) has been submitted in good faith; (2) is supported by existing law; (3) is supported by indisputable evidence (and will likely be compounded with further evidence); and (4) the complaint otherwise complies with the requirements of Rule 11.

/s/ Elias Makere

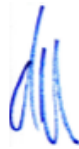


Verification Under Oath Pursuant to 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Moreover, the ultimate, material facts laid out above come from publicly available sources. Thus, they are not subject to dispute because *"they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"*. Some of the other facts are based on information and belief. These two elements come from my own personal observation, knowledge, and experience – coupled with circumstantial evidence of the matter.

Executed on this 31st day of December 2021.

UNITED STATES OF AMERICA



12/31/2021

Elias Makere, Plaintiff/Affiant

Endnotes:

^{1/} in the administrative realm, "official recognition" = "judicial notice"

^{2/} please see Art. I §5 (1st), Art. I §9 (5th), Art. I §22 (7th), and Art. I. §9 (14th), respectively

^{3/} additional note: judicial immunity does not confer on declaratory relief (§2) (see Genentech v Eli Lilly, 998 F. 2d at 936)

Electronic Copy (text-searchable, hyperlinked):

TextBookDiscrimination.com/Files/USFLND/20000096_AAC_20211231_123954.pdf
TextBookDiscrimination.com/Info/Misc/ALJPerjury/Complaint-Amended

Video:

https://youtu.be/LkfFHLyqg_g

EXHIBIT A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

201701432

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL. 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

2017 JUN 30 PM 12:32
ALLSTATE
CORPORATION
JACKSONVILLE
FLORIDA

EXHIBIT B

Position Statement

From: Allstate
To: State Agency (FCHR)
9/8/2017

(note: Allstate = Plaintiff's former employer)

[marked]

(first page only)



Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.¹ It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

EXHIBIT C

Allstate's Termination Rationale
(ie, Allstate fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT D

Notice of Determination

From: State Agency (FCHR)

To: Plaintiff/Allstate/Defendant's Agency
12/15/2017

[marked]



Rick Scott
Governor

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007
<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT E

Petition for Relief

From: Plaintiff
To: State Agencies (FCHR/DOAH)
1/19/2018

[marked]

(first page only)

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

PETITION SUPPLEMENT

Employment Discrimination (Race, Sex)

Here is the supplement to the Petition for Relief form. This document will begin with a description of the items in dispute. From there, the remaining pages exist to familiarize you with the case (legal elements, timeline, events, people, secured evidence, and requested evidence).

Petitioner: Elias Makere, Former Allstate Employee
Dates: April 2014 – October 2016
Race: Black
Sex: Male
Existence of Retaliation? Yes

000032

EXHIBIT F

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(Pages 1 and 2 only)

{Defendant's removal of sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs.

Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE

Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT G

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(2nd page only)

{defendant's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

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EXHIBIT H

FCHR Final Order
Exclusion of Sex Discrimination Complaint

From: State Agency (FCHR)
To: Defendant/Plaintiff/Allstate
6/27/2019

[marked]

(first page only)

{end result of Defendant's 'big lie'}

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY

Respondent.

EEOC Case No. None

FCHR Case No. 2017-01432

DOAH Case No. 18-0373

FCHR Order No. 19-044

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Elias Makere filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Allstate Insurance Company, committed unlawful employment practices by harassing and terminating Petitioner on the basis of Petitioner's race (Black). Petitioner also alleged that Respondent unlawfully retaliated against Petitioner.

EXHIBIT I

FCHR Final Order

19-065

In Re: Makere

12/10/2019

Florida

Corrupt Allowance of Bequests During Active Investigations

[marked]

(pages 1 through 3 only)

Electronic Copies:

HTML: TextBookDiscrimination.com/Info/Misc/FCHRBribery/FirstDecision

PDF: TextBookDiscrimination.com/Files/FCHR/FO_19065.pdf

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

IN RE:

SEPTEMBER 11, 2019 PETITION FOR
DECLARATORY STATEMENT

ELIAS MAKERE,

FCHR Order No. 19-065

Petitioner

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Preliminary Matters

On September 11, 2019, Petitioner Elias Makere filed a Petition for Declaratory Statement with the Florida Commission on Human Relations ("Commission"). Notice of the Petition was published in the *Florida Administrative Register*, Volume 45, Number 179, September 13, 2019. The Commission has not received a petition to intervene in this action from any other person. The Commission did not receive any comments on the matter. No hearing on the Petition was requested and none was held.

The Commission undertook action to resolve the Petition for Declaratory Statement at a duly noticed public hearing on December 10, 2019.

Petitioner states that he has "well-founded uncertainty" as to whether the Florida Commission on Human Relations can accept gifts/bequests during the investigative phase of his case under Florida Statutes 760.06(4). This scenario – where someone questions a statutory right – is precisely the scenario that the declaratory statement process is designed to cure. See *Rosekrantz v. Feit*, 81 So. 3d 526 (Fla. 3rd DCA 2012). "*The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes which an administrative agency enforces, adopts, or enters*". *Citizens of the State ex rel. Office of Public Counsel v. Florida Public Service Commission*, 164 So.3d 58, 59 (Fla. 1st DCA 2015).

Petitioner concludes his September 11, 2019 petition, stating,

"Petitioner respectfully requests a declaration on whether the applicable section of Florida Statutes – 760.06(4) – allows Respondent in his case to give the Agency (FCHR) gifts/bequests/etc. during the investigative phase of Petitioner's (his) complaint."

Comments

The Commission has not received any comments subsequent to the filing of the Notice of Petition in the Florida Administrative Register.

Conclusions of Law

The Florida Administrative Procedure Act states, “any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.” Section 120.565(1), Florida Statutes (2019). It also states, “the petition seeking a declaratory statement shall state with particularity the petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.” Section 120.565(2), Florida Statutes (2019). When acting on the petition, the agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. See Florida Administrative Code, R. 28-105.003.

A declaratory statement is a device for resolving controversies, questions, or doubts regarding the applicability of statutes, rules, and orders within the agency’s authority to a petitioner’s circumstances. See Florida Administrative Code, R. 28-105.001. Use of this device, however, is for a particular purpose and is to be used for that limited purpose.

To grant a declaratory statement petition, there need be a live case or controversy on the interpretation of a statute to meet the requirements for standing. There must be applicable law in doubt – doubt which is not present in this petition. Under the Florida Civil Rights Act of 1992, the Commission has the power to accept gifts, bequests, grants, or other payments, public or private, to help finance its activities. Section 760.06(4), Florida Statutes (2019). There are no limitations in the text of the statute, nor is there cabining language in other applicable areas of law suggesting alternative interpretations aside from the plain text. Acceptance of funding for the agency from public and private sources was not a driving force for the Florida legislature crafting this statute; therefore, there was not robust debate within the legislative history on the Commission’s powers suggesting possible limitations on receiving gifts. Under standard theories of statutory interpretation, the Commission is to assume that the legislature intended to exclude language creating time-based exceptions.

Additionally, Petitioner claims uncertainty as to the motivations of the investigative branch of this agency. Petitioner questions the permissibility of bequest submissions, which could create the appearance of impropriety for receiving financial support from Petitioner or Respondent in his case. Assuming that such bequests were received at any point – although the Commission has no knowledge that any bequests were received during the investigation of this case – Petitioner would still lack the statutory support suggesting doubt over when the Commission can accept gifts. There is no applicable case law suggesting that the Commission cannot accept bequests during the investigation of a claim, nor is there any textual support that such a hypothetical scenario would be barred by the governing statute.

Declaratory statements are not to be issued addressing hypothetical questions lacking a fact-specific case or controversy. Federation of Mobile Home Owners v. Dep't of Business Regulation, et. al., 479 So. 2d 252, 253 (Fla. 2nd DCA 1985). There need be a showing beyond that of curiosity to suggest there be an actual present practical need for a declaratory statement. Id. at 254. Although the Administrative Procedure Act broadens public access to agency activities, there still need be a fact-specific inquiry addressing ambiguity over interpretation of an existing statute for Petitioner to meet the standing requirements to grant a declaratory statement petition. Fla. Home Builders Assoc. v. Dep't of Labor & Employment Sec., 412 So. 2d 351, 352 (1982). Given that the answer to Petitioner's question of law on whether the Commission can accept gifts during the investigation phase of a claim is such an emphatic yes, there is no doubt to resolve, no controversy to address. Absent such ambiguity, accordingly, the Commission must deny the petition for declaratory statement.

Denial of Petition

The Petition for Declaratory Statement is DENIED, because Petitioner does not meet the prerequisite requirements of standing. For the Commission to rule on a petition for declaratory statement, there must be a 'live case or controversy' in the specific question of law seeking relief. The statute in question and its accompanying relevant case law do not indicate more than one interpretation of the provision in question; therefore, Petitioner lacks standing to bring such declaratory statement given this lack of legal ambiguity to be resolved. Accordingly, the Petition for Declaratory Statement on the question of the Commission accepting gifts/bequests during an investigation is DENIED.

Petitioner has the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 10, day of December,
2019 FOR THE FLORIDA COMMISSION ON HUMAN
RELATIONS

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Rebecca Steele

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 15*

PAGES 0170 - 0175

SHORT TITLE: Order Denying Civilian X's Motion for Judicial
Notice*

DATE ENTERED: 4/19/2022

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 49

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPT ONLY
(5TH, 6TH, 7TH, and 8TH PAGES ONLY)

Plaintiff also submitted an affidavit in support of his response.

Although Plaintiff likely intended³ for the affidavit to be part of his response, it has been separately filed on the docket.

In ruling on a motion to dismiss, the Court “may consider an extrinsic document if it is (1) central to the plaintiff’s claim, and (2) its authenticity is not challenged.” Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005) (quoted in SFM Holdings, Ltd. v. Banc of America Securities, LLC, 600 F.3d 1334, 1337 (11th Cir. 2010)); U.S. ex rel. Osheroff v. Humana Inc., 776 F.3d 805, 811 (11th Cir. 2015). Plaintiff’s affidavit is not a document that can be considered when ruling on the motion to dismiss; doing so would require converting the motion into a motion for summary judgment. The motion was not presented in accordance with the requirements of Rule 56 and will not be so converted.

Additionally, Plaintiff has filed a “motion for judicial notice of ten (10) public records.” ECF No. 44. It is unknown whether Plaintiff properly

documents electronically is able to be served when documents are electronically filed through the electronic filing system. N.D. Fla. Loc. R. 5.1(F).

³ Plaintiff’s response stated that it was a total of 64 pages. ECF No. 42. However, the last four pages - the affidavit - has been filed separately as ECF No. 43.

fastened⁴ all related documents together when submitting them to the Clerk of Court. Some of the proposed attachments were filed by the Clerk's Office with the motion, ECF No. 44, and others were entered on the docket with Plaintiff's separately filed motion to amend. ECF No. 45-2 at 21-55.⁵

At any rate, "a district court may consider judicially noticed documents" when ruling on a motion to dismiss. Griffin v. Verizon Commc'ns Inc., 746 F. App'x 873, 876 (11th Cir. 2018) *see also* Fed. R. Evid. 201(d) ("The court may take judicial notice at any stage of the proceeding"). "Judicial notice of 'an adjudicative fact' is appropriate when it 'is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.'" Fed. R. Evid. 201(a), (b)(2) (quoted in Griffin, 746 F. App'x at 876). Further, it is appropriate to "take judicial notice of record documents from other judicial proceedings." Lozman v. City of Riviera Bch., 713 F.3d 1066, 1075 n.9 (11th Cir. 2013); Griffin, 746 F. App'x at 876). Even so, the documents must have some relevance to be considered.

⁴ Local Rule 5.1(C) provides: "Hard copies should be securely fastened in the upper left-hand corner."

⁵ Attachments A through D were filed as part of ECF No. 44, and attachments E through J have been filed as part of ECF No. 45.

Here, the motion to dismiss argues, among other issues, that Plaintiff lacks Article III standing, that the Defendant has absolute judicial immunity, and the second amended complaint is barred by the doctrine of sovereign immunity. ECF No. 34. Plaintiff's motion does not demonstrate how any of the provided attachments are relevant to any of those primary issues.⁶

Moreover, "judicial notice" under Rule 201 may be taken of a "fact that is not subject to reasonable dispute." Plaintiff has, in general, submitted the extrinsic documents for an improper purpose and not to demonstrate an undisputable fact. For example, Plaintiff provided Attachment B to establish the Defendant's "culpability." ECF No. 44 at 5. Attachment D is to substantiate "why Plaintiff seeks declaratory relief in this action." *Id.* at 6. Other attachments are provided to show, according to Plaintiff, that the Defendant was not performing a judicial act. *Id.* Those are not proper items for judicial notice but, instead, require inferences to be made. Further, providing a "snapshot of a federal court docket" is not a proper document whose authenticity cannot be challenged. The motion to

⁶ The motion to dismiss also makes other arguments such as Plaintiff's second amended complaint fails to state a claim, that he is not entitled to injunctive relief, and the like. However, if the issues highlighted above are not resolved in Plaintiff's favor, there is no need to consider whether Plaintiff has alleged sufficient facts to state a claim.

take judicial notice, ECF No. 44, is denied. Plaintiff is advised that only the second amended complaint, motion to dismiss, and his response will be considered when ruling on the pending motion.

Finally, Plaintiff has filed a motion for leave to amend the complaint, ECF No. 45, and he simultaneously provided a request to issue a summons to a newly added Defendant, ECF No. 46. Those documents will be addressed separately.

Accordingly, it is

ORDERED:

1. Plaintiff's motion to requesting the Court take judicial notice of ten documents, ECF No. 44, is **DENIED**.

2. No further action will be taken on Plaintiff's recent notices, ECF Nos. 47-48, and his affi, ECF No. 43, will not be considered in ruling on the pending motion to dismiss, ECF No. 34.

3. Plaintiff has until **May 6, 2022**, in which to file a response to this Order which demonstrates Plaintiff properly served a copy of his response on the Defendant.

4. Ruling on the pending motion to dismiss, ECF No. 34, remains **DEFERRED**.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 16*

PAGES 0175 - 0176

SHORT TITLE: Order Denying Civilian X's First Motion for
Leave to Amend Complaint*

DATE ENTERED: 4/19/2022

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 50

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPT ONLY
(3RD PAGE ONLY)

complaint is futile when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment for the defendant.” Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007); Giles v. Manser, 757 F. App’x 891, 894 (11th Cir. 2018) (“proposed amendment may be denied for futility ‘when the complaint as amended would still be properly dismissed’”).

First, the proposed pleading is 100 pages in length and is comprised of 226 numbered paragraphs with subparts. ECF No. 45-1. That violates Local Rule 5.7 which provides that a “complaint, together with any memorandum, must not exceed 25 pages, unless the Court authorizes it.” N.D. Fla. Loc. R. 5.7(B). Plaintiff’s motion to amend should be denied because exceeding the page limitation has not been authorized. A complaint that violates Rule 5.7 is subject to dismissal.

Second, Plaintiff will not be permitted to file a 100-page complaint in the future because doing so would violate Rule 8 of the Federal Rules of Civil Procedure. Rule 8 requires the factual allegations of a complaint “be simple, concise, and direct.” Fed. R. Civ. P. 8(d). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). A 100-page pleading is not short,

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From
US District Court, Florida, Northern District
4:21-cv-00096
Makere v Early

VOLUME 01
ITEM 17*
PAGES 0177 - 0179

SHORT TITLE: Order Denying Civilian X's Second Motion for
Leave to Amend Complaint*

DATE ENTERED: 6/6/2022

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 63

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPT ONLY
(7TH & 9TH PAGE ONLY)

“more than an unadorned, the-defendant-unlawfully-harmed-me accusation”). “Factual allegations that are merely consistent with a defendant’s liability fall short of being facially plausible.” *Doe v. Samford Univ.*, 29 F.4th 675, 685-86 (11th Cir. 2022) (quotation omitted).

Courts “hold the allegations of a *pro se* complaint to less stringent standards than formal pleadings drafted by lawyers.” *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But federal courts “cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action.” *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020) (citation omitted).

III. DISCUSSION

A. The Proposed Amended Complaint is a Shotgun Pleading

Plaintiff’s complaint is a so-called “shotgun pleading.” A shotgun pleading is a complaint that violates Federal Rules of Civil Procedure 8(a)(2) or 10(b), or both. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021); *Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). The Eleventh Circuit has identified four categories of impermissible “shotgun” pleadings. *Weiland*, 792 F.3d at 1321. One category includes complaints that are “replete with *conclusory*, *vague*, and immaterial facts not obviously connected to any particular cause of action.” *Id.* at 1322 (emphasis added). An additional type of shotgun pleadings are complaints that commit the “sin of asserting multiple claims against multiple

B. Plaintiff Fails to State a Plausible Claim For Relief

In addition to the defects identified above, Plaintiff's fourth amended complaint clearly fails to state a plausible claim for relief. Plaintiff's allegations against the proposed defendants are nothing more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Iqbal*, 556 U.S. at 678. Plaintiff provides only vague, conclusory assertions such as, "Early perjured himself" and "Gorsica engaged in bribery and did more." Doc. 53-1 at 4. These barebone assertions do not plausibly suggest that the proposed defendants violated any of Plaintiff's constitutional rights or engaged in a conspiracy to violate Plaintiff's constitutional rights. He plainly does not provide sufficient notice of the factual basis on which any of his claims rest. *Vibe Micro, Inc.*, 878 F.3d at 1295 (holding that the plaintiff's allegations must provide "adequate notice of the claim against [the defendant] and the grounds on which those claims rest.") (quoting *Weiland*, 792 F.3d at 1323). In sum, Plaintiff's allegations are conclusions that lack any factual detail that would allow his claims to cross the line from possible to plausible.

Similarly, Plaintiff has failed to state a claim insofar as some of the statutory provisions cited by Plaintiff do not provide a private cause of action. For instance, although 28 U.S.C. § 455 provides that a party may seek recusal of a justice, judge, or magistrate judge, this statute does not create a private cause of action for damages or equitable relief. *Owen v. Cole*, No. CV 21-179-DCR, 2021 WL 1293087, at *2

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME 01

ITEM 18*

PAGES 0180 - 0181

SHORT TITLE: Report & Recommendation for Dismissal

DATE ENTERED: 7/13/2022

DOC TYPE: District Court Order

TRIBUNAL: US District Court, Florida, Northern District

CASE NO: 4:21-cv-00096

CASE CAPTION: *Makere v Early*

LINK: <https://ecf.flnd.uscourts.gov/>

DOC: 66

* NOT ENTIRE DOCUMENT | PERTINENT EXCERPT ONLY
(8TH PAGE ONLY)

App'x. 16, 17 (11th Cir. 2006) (citing *Bolin*, 225 F.3d at 1242). The doctrine applies to administrative law judges. See *Butz v. Economou*, 438 U.S. 478, 514 (1978).

In determining whether a judge's act is "judicial" for purposes of immunity, courts consider (1) whether the act is one normally performed by judges, and (2) whether the complaining party was dealing with the judge in his judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). The Eleventh Circuit has considered the following factors when determining whether an act by a judge is "judicial": (1) was the act complained of a normal judicial function; (2) did the events occur in the judge's chambers or in open court; (3) was the controversy involved a case pending before the judge; and (4) did the confrontation arise immediately out of a visit to the judge in his judicial capacity. *Sibley*, 437 F.3d at 1070. Applying those factors to Plaintiff's allegations, it is clear the acts complained of by Plaintiff were undertaken by Judge Early in his judicial capacity.

As stated above, Plaintiff complains about Judge Early's order directing Plaintiff to cease a certain line of questioning. That order was made during court proceedings and was a normal function of a judge in controlling proceedings before him. See e.g., *Stevens v. Osuna*, 877 F.3d 1293, 1305 (11th Cir. 2017) (judicial functions include maintaining control over the courtroom); *Sibley*, 437 F.3d at 1071 (applying judicial immunity to a plaintiff's challenge to a judge's questions during oral argument). Plaintiff also complains about certain statements or omissions Judge

SUPPLEMENTAL RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR

ITEM 01

PAGES 0183 - 0187

SHORT TITLE: Interlocutory Order Remanding for Investigation
on Gender (Sex) Basis

DATE ENTERED: 11/10/2004

DOC TYPE: State Administrative Order

TRIBUNAL: Florida Commission on Human Relations

CASE NO: 23-00302

CASE CAPTION: *Shepley v Lazy Days RV Center, Inc.*

LINK: <https://fchr.myflorida.com/final-orders>

DOC: *n/a*

6-22-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

04 NOV 12 AM 9:37

MADALYNN A. SHEPLEY,

Petitioner,

v.

LAZY DAYS RV CENTER, INC.,

Respondent.

EEOC Case No. NONE

FCHR Case No. 23-00302

DOAH Case No. 04-1019

FCHR Order No. 04-140

DIVISION OF
ADMINISTRATIVE
HEARINGS

DSM

CLW

AP

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL
EMPLOYMENT PRACTICE ON DISABILITY BASIS AND INTERLOCATORY
ORDER REMANDING FOR INVESTIGATION ON GENDER (SEX) BASIS**

Petitioner, MADALYNN A. SHEPLEY, filed a Complaint of Discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, LAZY DAYS RV CENTER, INC., committed an unlawful employment practice resulting in termination of her employment because of her disability and gender (sex). The allegations set forth in the complaint were determined to be outside the jurisdiction of the Commission and on February 11, 2004, the Executive Director issued his determination of No Jurisdiction. Subsequently, the Petitioner filed a Petition for Relief and a hearing was held May 7, 2004, in Tampa, Florida. The substance of the hearing was placing into the record the results of a telephone conference call held between counsel for both parties and the ALJ on May 6, 2004. Their joint stipulations were also placed into the record.

Administrative Law Judge Daniel Manry, having considered the filed materials, issued his Recommended Order of Dismissal dated June 22, 2004.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact and Conclusions of Law

The ALJ found that the Petitioner was a preoperative transsexual woman. Respondent employed Petitioner as an "RV technician" from August 1999 until January 7, 2002, when Respondent terminated Petitioner's employment. We adopt these findings of fact.

The ALJ concluded that there is no basis for concluding that transsexualism is a disability pursuant to FCRA and specifically recognized that the underlying federal law and the regulations that construe the ADA do not recognize transsexualism as a disability. He limited the application of the prior FCHR case of Smith v. City of Jacksonville, Jacksonville Correctional Institute, DOAH # 88-5451, 1991 WL 833882 (1991); FCHR # 86-985 (1992), because he found no allegation, nor did the Petitioner offer evidence, of a "separate disability" affecting one or

more of her major life functions; nor was there evidence that the Respondent perceived her as disabled.

The ALJ further concluded that “the Commission also determined, as a matter of law, that the prohibition in Chapter 760, Florida Statutes (2001), against discrimination on the basis of sex does not prohibit discrimination on the basis of sexual identity or transsexuality” and gave deference to that determination. However, in a recent case, a Commission panel determined that a transsexual, as a man or woman, may maintain an action for discrimination based on sex. Fishbaugh v. Brevard County Sheriff’s Office, FCHR Order # 04-103 (FCHR August 20, 2004).

We should note that the ALJ mistakenly cited the Recommended Order in that case as a Final Order of the Commission. We would also like to note that the ALJ mistakenly asserted that the Commission had no substantive jurisdiction to make a determination of the legal sufficiency of allegations. These are errors; albeit, harmless errors in light of the Commission action taken herein.

We modify the conclusions of law accordingly.

In modifying the conclusions of law of the Administrative Law Judge, we conclude:

(1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions of law stating what must be demonstrated to establish the jurisdiction of the Commission under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law we are substituting are as, or more, reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2001).

We adopt the Administrative Law Judge’s conclusions of law as modified.

Exceptions

Both Parties filed exceptions to the Administrative Law Judge’s Recommended Order.

Petitioner filed nine (9) exceptions to the Administrative Law Judge’s Recommended Order in a document entitled, “Petitioner’s Exceptions to Recommended Order of Dismissal and Petitioner’s Motion for Stay Pending Decision in Similar Matter.”

Exceptions 1, 4, 5, 6, 7, 8 & 9 refer basically to the creation of a factual record for both the Commission determination and the Recommended Order. The Parties stipulated that the facts alleged in the pleadings were sufficient to raise the questions of law at issue here: whether the Commission had jurisdiction over a matter involving 1) a disability claim by a transsexual; or 2) a sexual discrimination claim by a transsexual. The ALJ’s denial of the Motion to Dismiss and his ruling on the questions of law moot these points. The exceptions are rejected.

Exception 2 challenges the ALJ’s statement of characterizing the Commission’s determination to be based on a complaint pursuant to the Americans with Disabilities Act (“ADA”). The ALJ clearly delineated the issue to be whether the Commission had jurisdiction under Chapter 760, FS, to determine if the Respondent discriminated against the Petitioner on the basis of her sex or disability. Since he ruled directly on those issues, this exception is moot and is rejected.

Exception 3 challenges the ALJ's characterization of the Petitioner's sex discrimination claim. The Commission accepts this exception to the extent it supports its conclusions that, as a man or woman, transsexuals may maintain an action for sexual discrimination.

Respondent filed three (3) exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Exceptions to Recommended Order of Dismissal."

Respondent's first two exceptions (to Paragraphs Nos. 8, 9 & 17 and 7 & 21) raise similar concerns to the Petitioner's exceptions as to the creation of a factual record. Since both Parties stipulated that the facts alleged in the pleadings were sufficient to raise the questions of law involved and the ALJ ruled on them, the exceptions are mooted and are rejected.

Respondent's third exception (to Paragraph 16) challenges the ALJ's discussion of the law and the Commission's position. The arguing of the weight of the case law is best left to review, appellate arguments and statements of supplemental authorities. The Commission is aware of the case law and, as an exception, this exception is rejected.

Dismissal as to basis of disability

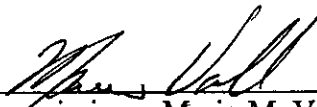
The Request for Relief and Complaint of Discrimination on the basis of disability is DISMISSED with prejudice.

Remand as to basis of sex (gender)

The Complaint of Discrimination on the basis of sex is hereby reinstated and a finding is made that the Commission has jurisdiction to investigate the complaint consistent with this order.

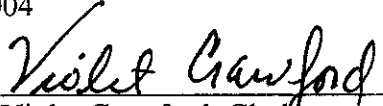
The parties have the right to seek judicial review of the Final Order of Dismissal. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 10th day of November, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS



Commissioner Mario M. Valle, Panel Chairperson
~~Commissioner Roosevelt Paige~~
Commissioner Aletta Shutes

Filed this 10th day of November, 2004
in Tallahassee, Florida.



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Honorable Daniel Manry, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 10th day of November, 2004.

BY: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 02
PAGES 0188 - 0191

SHORT TITLE: Defendant's Order Granting Official...

DATE ENTERED: 2/18/2019

DOC TYPE: Party Filing

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 18-0373

CASE CAPTION: *Makere v Allstate*

LINK: <http://doah.state.fl.us>

DOC: *n/a*

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs.

Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.

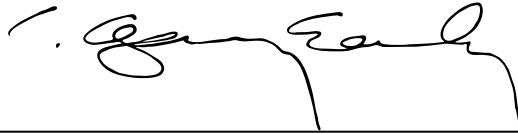
_____ /

ORDER GRANTING MOTION FOR OFFICIAL RECOGNITION
OF NO REASONABLE CAUSE DETERMINATION

This case has come before the undersigned on Respondent's Motion for Official Recognition of No Reasonable Cause Determination Issued by Florida Commission on Human Relations (Motion for Official Recognition). The Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to Petitioner for this proceeding. Petitioner did not file a response.

Section 90.202, Florida Statutes, identifies those matters that may be judicially noticed. Under a broad construction, the matters cited by Respondent could be considered to fall under section 90.202(5), being "[o]fficial actions of the . . . executive . . . departments of . . . any state . . . of the United States." Therefore, the Motion for Official Recognition is GRANTED.

DONE AND ORDERED this 18th day of February, 2019, in
Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of February, 2019.

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APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 03
PAGES 0192 - 0196

SHORT TITLE: Final Order Dismissing Petition for Relief from
 an Unlawful Employment Practice

DATE ENTERED: 11/12/2019

DOC TYPE: State Administrative Order

TRIBUNAL: Florida Commission on Human Relations

CASE NO: 2016-01889

CASE CAPTION: *Wesley v St. Lucie County*

LINK: <https://fchr.myflorida.com/final-orders>

DOC: *n/a*

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PEGGY F. WESLEY,

EEOC Case No. 15D201600874

Petitioner,

FCHR Case No. 2016-01889

v.

DOAH Case No. 18-2066

SAINT LUCIE COUNTY SHERIFF'S,
OFFICE,

FCHR Order No. 19-063

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Peggy F. Wesley filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Saint Lucie County Sheriff's Office, committed an unlawful employment practice on the basis of Petitioner's disability and on the basis of retaliation for having engaged in a protected activity.

The allegations set forth in the complaint were investigated, and, on March 16, 2018, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held before Administrative Law Judge June C. McKinney in Port St. Lucie, Florida, on November 30, 2018, and February 11 and 12, 2019, and by video teleconferencing in Fort Pierce and Tallahassee, Florida, on May 28, 2019.

Judge McKinney issued a Recommended Order, dated August 30, 2019, recommending that the Commission dismiss the Petition for Relief.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The Florida Civil Rights Act of 1992 prohibits discrimination on the bases of race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. Section 760.10, Florida Statutes (2019). Also, “[i]t is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.” Section 760.10(7), Florida Statutes (2019). And furthermore, the Commission has no enforcement responsibility, under the Florida Civil Rights Act of 1992, for the Family Medical Leave Act (FMLA). Thus, we disagree with the conclusion of law that the Administrative Law Judge had jurisdiction to decide Petitioner’s claims of FMLA retaliation, and that the Commission, consequently, has jurisdiction to do the same. In addition, we disagree with the Administrative Law Judge’s assertion that taking leave under the FMLA is a protected activity under section 760.10(7), Florida Statutes.

Based on the foregoing, we reject the Administrative Law Judge’s conclusions of law set out at Recommended Order, ¶ 81, ¶ 96, ¶ 99, ¶101, and ¶ 102. In correcting these conclusions of law we conclude: (1) that the conclusions of law being modified/rejected are conclusions of law over which the Commission has substantive jurisdiction; (2) that the reason the corrections are being made by the Commission is that the conclusions of law as stated apply statutory provisions not related to this case; and (3) that in making these modifications/rejections the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2019).

We adopt the Administrative Law Judge’s conclusions of law set out at Recommended Order, ¶ 80, ¶ 82 through ¶ 95, ¶ 97, ¶ 98, ¶ 100, and ¶ 103.

Exceptions

Respondent filed exceptions to the Administrative Law Judge’s Recommended Order in a document, “Respondent’s Exceptions to Recommended Order,” filed with the Division of Administrative Hearings on September 12, 2019.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, *Bristol v. American Water*, FCHR Order No. 15-041 (July 9, 2015), *Medina v. Department of Children and Families*, FCHR Order No. 12-016 (April 23, 2012), *St Louis v. Florida Physician Medical Group*, FCHR Order No. 11-078 (October 6, 2011), *Garcia v. Heart of Florida Medical Center*, FCHR Order No. 10-061 (August 10, 2010)

and Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

The exceptions document takes issue with the Administrative Law Judge's conclusion that she had jurisdiction to decide Petitioner's claims of FMLA retaliation, and that the Commission, consequently, has jurisdiction to decide the claims too.

We have dealt with this issue in the Conclusions of Law section of this Order, above.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 12 day of November, 2019.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam (not present and did not participate); and
Commissioner Rebecca Steele

Filed this 12 day of November, 2019,
in Tallahassee, Florida.



Clerk

Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Peggy Wesley
[address of record]

Saint Lucie County Sheriff's Office
c/o R.W. Evans
Allen Norton & Blue, PA
906 N. Monroe Street
Tallahassee, FL 32303

June C. McKinney, Administrative Law Judge, DOAH

Stanley Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 12 day of November, 2019.

By: Tammy Barton
Clerk of the Commission
Florida Commission on Human Relations

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 04
PAGES 0197 - 0219

SHORT TITLE: Verified Complaint (*Makere v Allstate*)

DATE ENTERED: 8/12/2020

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Middle District

CASE NO: 3:20-cv-00905-MMH-JRK

CASE CAPTION: *Makere v Allstate*

LINK: <http://ecf.flmd.uscourts.gov>

DOC: 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT):

)

Division: (3) Jacksonville

ALLSTATE INSURANCE COMPANY,

)

Defendant,

)

COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 10th day of August 2020 and hereby sues Defendant, Allstate Insurance Company and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under 42 U.S.C. 1981 The Civil Rights Act of 1886 ("§1981") to redress Defendant's unlawful employment practices towards Plaintiff (also see 28 USC §1331, §1343, and §1367). Charges which include - but are not limited to - unlawful retaliation, unlawful interference, color discrimination, race discrimination, and sex discrimination.

II. JURISDICTION: AMOUNT

2. Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars (\$30,000) - exclusive of interest, costs, and attorney fees.

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County). Thus, he was a "Person", as described by §1981.

4. At all times material hereto, Defendant (a Florida corporation), had its principal place of business in Jacksonville, FL (Duval County). Employing fifteen (15) or more employees at all times pertinent. As such, Defendant satisfies the definition of an "employer" - as contemplated by §1981 (via state law).

IV. JURISDICTION: VENUE

5. Defendant's unlawful conduct was committed within the jurisdiction of this Court. Thus, pursuant to 28 USC §1331 FS (and §1391), this venue is correct.

V. STATUTORY PREREQUISITES

6. All conditions precedent to bringing this action have been satisfied.

7. Plaintiff has timely filed this complaint within four (4) years of the date that Defendant terminated his employment.

VI. STATEMENT OF THE FACTS

8. Plaintiff, a black male, began working for Defendant on November 18, 2013.

9. Defendant admitted him into its Actuarial Career Program ("ACP") alongside many of his newfound co-workers. The ACP's goal was to develop its members into FSAs (Fellows of the Society of Actuaries).

10. At the time of hiring, Plaintiff had passed six (6) actuarial exams, and had a little over one year of experience. This meant that he would have to pass four (4) more exams to attain the desired credential.

11. Defendant hired Plaintiff into its entry-level position named "Actuarial Technician" even though he was qualified for Defendant's higher "Actuarial Associate" position. He reported directly to Ms. Lisa Henry.

12. Right off the bat, Ms. Henry subjected Plaintiff to sexual harassment; severe enough to alter the terms & conditions of his employment.

a. A few Saturdays into Plaintiff's employment, Ms. Henry asked him to join her for dinner-&a-movie. She added - voluntarily - that her husband would not be there. Plaintiff was distressed:

i. For one, he had just moved to Jacksonville; did not know anyone else in the city; and was reliant on work income.

ii. Secondly, he did not want a personal relationship with Ms. Henry.

iii. Moreover, he did not want a romantic/sexual relationship with Ms. Henry either.

Plaintiff declined Ms. Henry's first date request.

It would not be her last.

13. Throughout Plaintiff's 3-year tenure with Defendant, Ms. Henry asked him out on a near-weekly basis. Usually asking him to go bowling with her. In that 33-month span, Ms. Henry never asked any other employee to go bowling with her. Just Plaintiff.
14. As a result, Plaintiff tried to avoid contact with Ms. Henry. Most notably, by abstaining from lunch outings. For instance, he exchanged his night-time gym visits with lunch-time gym visits (the gym was on Defendant's property) to dodge further harassment.^{1/}
15. In early December 2013, Plaintiff took and passed three minor exams.^{2/} Ms. Henry sat in as his proctor. He took the exams on company property.
16. Later that month, Plaintiff took and passed his seventh (7th) actuarial exam (the "Final Assessment"). These tests qualified Plaintiff for his first actuarial credential: the ASA (Associate of the Society of Actuaries).
17. To receive it, he would have to attend the Society of Actuaries' ("SOA") in-person course. The course was held in Atlanta, GA (ie, 500 miles from Plaintiff/Defendant).
18. In the days leading up to his multi-day trip, Ms. Henry offered to join Plaintiff. The trip included a hotel stay. She asked him in front of her own manager, Mr. Richard Schaefer. Plaintiff found her request to be illegitimate and sexually-motivated.

19. As a result, Plaintiff ramped up his measures for avoiding Ms. Henry. For example, he minimized face-to-face meetings with her by putting more detail in his Monday-morning updates.

a. Note: these face-to-face meetings featured Ms. Henry staring at Plaintiff's privates; excessively.

20. Around this same time, the racial harassment ramped up, too. In a Spring 2014 inter-departmental meeting, Ms. Henry characterized Plaintiff as being racially inferior.

a. Doing so by saying a task was so easy she could get a "monkey to do [it]". She elaborated, "[it] will sit down, look at a piece of paper, then look up to compare it to what's on the computer". It seemed she was casting Plaintiff as this monkey.

i. After all, he was Ms. Henry's only [in-house] direct report. Plus, likening black people to monkeys was a classic way of imputing racial inferiority onto them.

b. Just minutes later, Ms. Henry's offensive remarks crystallized. Upon returning to the cubicles, she directed Plaintiff to sit down at his seat. Then, she printed out a spreadsheet, placed it on his desk, and instructed him to compare the printout to the computer screen to see if the numbers were the same.

c. Plaintiff was the monkey.

21. As Defendant's only black actuary, Plaintiff's employment was conditioned on racial inferiority. Here are some highlights:

a. When Plaintiff received his ASA credential - a major, equalizing milestone for Defendant's actuaries - Defendant paid him a lower salary than it paid his peers.

b. In June 2014, Mr. Louis Posick (an actuarial manager) proclaimed that Plaintiff's recent credentials "*devalue[d] the profession*". Despite the fact that:

- i. Plaintiff passed the same exams that everyone else did;
- ii. Plaintiff received his ASA faster than most of his peers/predecessors.

As became the norm, Defendant eschewed facts for the fictions of Plaintiff's racial inferiority.

c. Mr. Posick's direct report, Mr. Kazuhiko Nagai, followed suit by issuing a nonstop array of harassment directed at Plaintiff. Harassment which involved mocking, ridicule, and incessant invasions of space. Harassment punctuated by a racist doll (a monkey that Mr. Nagai placed on Plaintiff's desk - in plain sight).

d. Mr. Posick's other direct report, Mr. Phil Kite, joined in by characterizing Plaintiff as a monkey, too. In Fall 2015, as Mr. Nagai's racist monkey doll sat on Plaintiff's desk, Mr. Kite yelled loudly, "[Plaintiff] you look like a chimpanzee!!!".

e. In Summer 2015, Ms. Marilou Halim (an actuarial manager) screamed profanities at Plaintiff as he sat studying in a small conference room. His '*crime*': buying a condolence card for a grieving co-worker.

f. In Spring 2016, on two separate occasions, Ms. Henry said that "*[Plaintiff was the] monkey we can't let grow into a gorilla*". Once again playing on the theme of black inferiority.

22. Three things were clear:

- a. Defendant held its actuarial department in high esteem; basing that prestige on the notion of high intelligence.
- b. Defendant viewed black people as being racially inferior; basing that disdain on the notion of low intelligence.
- c. Defendant believed that black actuaries - and Plaintiff in particular - defiled the sanctity of its actuarial department; just by virtue of their existence.

23. Recognizing Defendant's animus, Plaintiff begged management to let him work from home. He asked on a routine basis. Mainly in response to direct hostilities (eg, mocking & ridicule, racist dolls, racist characterizations, racial proclamations, etc.).

- a. Defendant denied his requests every time; giving the following excuse: *'Plaintiff could not work from home because sitting near his coworkers was a condition of his employment'*. Fateful.

- b. Defendant, however, allowed its non-black employees to work from home.

- i. Ms. Bridget Tennant - who also reported to Ms. Henry - had been working from home for over a decade (her home was in Maryland; 700 miles away).
 - ii. Ms. Tetyana Dostie - who reported to Ms. Halim - was granted her contemporaneous work-from-home request.
 - iii. Defendant has allowed many other non-black actuarial employees to work from home.

24. Yet every time Plaintiff attempted to avoid the harassment, Defendant targeted him for more. Graduating the harassment into discrimination.

25. In Fall 2015, Mr. David Dickson (an IT manager) initiated Defendant's systematic method for discrimination. He called Plaintiff at 5:17 pm, introduced himself, told Plaintiff a series of lies, then threatened to get Plaintiff fired. It was a severe, surprising, and unwarranted escalation.

a. Additionally, in November 2015, prior to his call, Mr. Dickson approached Plaintiff in the parking lot after dark. Plaintiff was on his bicycle heading home. Mr. Dickson told Plaintiff in an ominous tone, "*be careful on your bike.*" Plaintiff saw it as a threat. One which later came to fruition (§47, *infra*).

b. Also, in Fall 2015, Ms. Marianne Poriecca (an IT manager) told Plaintiff's direct manager (Ms. Henry) that she wanted Plaintiff fired ("*I can't believe he still works here*"). A message that Ms. Henry relayed to Plaintiff in early 2016. A message - that Ms. Henry admitted - was made without reason.

26. There was no legitimate reason for someone to hunt for Plaintiff's termination.

a. Note: at this point, Plaintiff had passed his eighth (8th) actuarial exam and was working on number nine (9).

27. Plaintiff thereby filed an internal discrimination complaint against Mr. Dickson. Who acknowledged that it was based on "racism". As it turns out, Mr. Dickson has been charged with employment discrimination before.^{3/}

28. Management responded by sending several staff members to replace Plaintiff's employment. The most explicit one was Mr. James Parks; who said that management (Mr. Schaefer, Mr. Dickson) sent him to take over for Plaintiff. Plaintiff obliged; sharing his knowledge and skills - as he had always done with all of his work (with everyone).
29. Also, in retaliation for Plaintiff's internal complaint, Ms. Henry denied Plaintiff a raise in 2016. Instead, she gave Plaintiff the standard actuarial salary increase for having passed an actuarial course (the DMAC)^{4/}. Plaintiff subsequently filed an internal retaliation complaint against Ms. Henry.
30. Matters only got worse for Plaintiff. Perhaps, the most significant event was when a non-actuarial co-worker sabotaged his work. On June 30, 2016, Ms. Patricia Boland staged an actuarial miscalculation; and attempted to blame it on Plaintiff. Plaintiff caught her in the act, though.
31. Alarmed that anyone would do that (ie, deliberately attempt to get Plaintiff fired), Plaintiff reported it - among other things (see Racist Doll ¶22cd, see Mr. Dickson ¶28, see Ms. Henry ¶30) - to Mr. Schaefer. Who told Plaintiff, "*[Plaintiff] you're paranoid*", coupled with "*you should figure out if this is the place for you to work*".
32. The message was clear: discrimination was going to win out.
- a. A message which was further emphasized when Plaintiff learned that Defendant made him purchase his actuarial exam (\$1,025) while not requiring the same of his non-black peers (Mr. Victor Ciurte, Mr. Kazuhiko Nagai, etc.).

33. Within a week-or-so Plaintiff received negative results from his ninth (9th) actuarial exam. He believed foul play was involved. Nevertheless, Plaintiff had thereby failed to satisfy Defendant's "1-in-3 rule".

a. Note: Defendant's ACP had a "1-in-3 rule". The rule stated that an employee had to pass one exam in three attempts. Failure to satisfy that rule could lead to removal from the program.

34. Shortly thereafter, on-or-around August 10, 2016, Ms. Henry approached Plaintiff at his desk. It was at about 5:12 pm. She - once again - asked Plaintiff to go out with her (bowling). This request was different, though, because Defendant had severely compromised Plaintiff's employment. Nevertheless, Plaintiff - once again - declined to go out with Ms. Henry. Shocked; she stood at the corner of his desk; mouth open; for about 2-3 seconds.

35. Just hours later, Ms. Henry filed to have Plaintiff terminated.

36. That Friday (August 12, 2016), Ms. Henry escorted Plaintiff to the 1st floor for a meeting. It was not a regular staff meeting (as had been described). Instead, it was a termination meeting. The HR manager, Mr. Ellis Manucy, conducted it. He informed Plaintiff he was being fired because he failed his actuarial exam. He added that it was "*extremely rare*". No other reason was given.

37. The failure was not rare; the termination response was (and discriminatory). Here is a list of Defendant's employees who also failed to satisfy the "1-in-3" actuarial exam requirement:

- a. Mr. Victor Ciurte
- b. Ms. Tetyana Dostie
- c. Mr. Josh Garcia
- d. Mr. Phil Kite
- e. Ms. Anna Lunder
- f. Mr. Kazuhiko Nagai
- g. Ms. Bridget Tennant

None of whom were black (let alone black men).

38. Moreover, Defendant had a number of employees who were never even required to satisfy the "1-in-3 rule". Including, but not limited to, Ms. Nasreen Ali. Likewise, Ms. Ali was neither black nor a man.

39. Immediately after terminating Plaintiff, Defendant hired two non-actuaries to assume his responsibilities. Neither of whom had even attempted an actuarial exam (let alone pass one). They were Ms. Boland and Mr. Christopher Mirisola. Again - neither were black (let alone black men).

40. Within a month, Ms. Henry approached Plaintiff in a restaurant near Plaintiff's home. She followed up with friendly emails to his personal account.

Plaintiff never replied.

41. Additionally, Plaintiff never re-applied for employment with Defendant. Nor did he ever inquire about returning to Defendant's employ.

42. Plaintiff was still focused on attaining his FSA. That Fall, he passed his ninth (9th) actuarial exam.

43. On June 30, 2017, Plaintiff filed a charge of discrimination with the FCHR ("Originating Charge"). It was on the basis of race and sex.
44. As the case progressed to the administrative hearing phase, Plaintiff contacted several non-parties to begin discovery.
45. One person, Mr. Kirk Higgins, went on attack in response. Filing documents aimed at embarrassing Plaintiff - in violation of §120.569(2)(e) FS; even calling local police departments to try to dig up dirt on Plaintiff. Importantly, Mr. Higgins explicitly stated that his actions were motivated by (i) his relationship with Defendant; and (ii) Plaintiff's demographics.
46. In April 2018, Plaintiff was hit by a car while riding his bicycle. The car was traveling 45 mph (reportedly). Mr. Dickson's 2015 threat had indeed played out (§26 *supra*).
47. Plaintiff was also getting death threats on the phone; and supplemental taunts through the mail.
48. In July 2018 - during the administrative case - Defendant encouraged Mr. Higgins to file unauthorized documents against Plaintiff; instructing him on what to say. Defendant was behind these attacks.
49. That same month, Plaintiff's former employer (Genworth Financial) reduced his retirement benefits substantially. They mailed him the notice. Yet, Plaintiff had never given Genworth his Florida address. It was clear that Defendant (via Genworth) was taking retaliatory actions to further damage Plaintiff's employment and compensation.
50. Around this time, Plaintiff passed his tenth (10th) actuarial exam; and achieved FSA status (see **Exhibit B**). Soon thereafter, Plaintiff notified the FCHR; eventually leading to these charges.

VII. ULTIMATE FACTS

51. Defendant only fired the black man who failed an actuarial exam.

- a. It preceded this adverse employment action with years of harassment. Punctuated by:
 - i. unwanted sexual attention;
 - ii. date requests;
 - iii. racist dolls;
 - iv. racist characterizations;
 - v. and more.
- b. The harassment was coupled with disparate treatment. Highlighted by:
 - i. paying Plaintiff a lower salary than his non-black-male peers;
 - ii. forcing Plaintiff to pay \$1,025 for an actuarial exam while not doing the same to Plaintiff's non-black-male counterparts; and
 - iii. denying Plaintiff the work-from-home privilege that it granted Plaintiff's non-black-male coworkers.
- c. Defendant followed up this adverse act with:
 - i. financial retaliation;
 - ii. professional retaliation;
 - iii. and lethal retaliation.

COUNT I: RACIAL DISCRIMINATION | §760.11 FS, et. seq.

52. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).

53. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.

54. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

COUNT II: SEXUAL DISCRIMINATION | §760.11 FS, et. seq.

55. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).

56. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-male coworkers. Ms. Henry's sexual harassment related to Plaintiff's gender; and was so severe and pervasive it created a hostile work environment for Plaintiff.

57. Defendant's resulting decision to terminate him was motivated by Plaintiff's sex.

COUNT III: RETALIATION | §760.11 FS, et. seq.

58. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).

59. Defendant retaliated against Plaintiff because he complained about Defendant's discriminatory practices (both internally and externally).

COUNT IV: RACE DISCRIMINATION | 42 U.S.C. §1981 et. seq.

60. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 9 through 51).

61. Defendant continuously treated Plaintiff less favorably and unfairly compared to his non-black coworkers. The offensive and derogatory remarks/actions were related to Plaintiff's race; and were so severe and pervasive they created a hostile work environment for Plaintiff.

62. Defendant's resulting decision to terminate Plaintiff was motivated by Plaintiff's race.

PRETEXT

63. Defendant claimed that it terminated Plaintiff for a legitimate business reason by asserting that it terminated Plaintiff "solely" because he failed an actuarial exam (see **Exhibit A**).

64. Yet, when Defendant's non-black-male employees also failed actuarial exams Defendant never fired them.

65. Notably, Defendant replaced Plaintiff with unqualified non-black-male employees. Neither of whom had passed even one actuarial exam.

a. The disparity in qualifications (ie, 0 exams vs 8 exams) "*jumps off the page and smacks you in the face*".

66. As such, Defendant's reason for terminating Plaintiff was illegitimate, and merely a pretext for unlawful discrimination.

DAMAGES

67. As a direct and proximate result of said acts, Plaintiff has suffered - and continues to suffer - loss of employment, loss of income, loss of other employment benefits, loss of earning capacity and has suffered and continues to suffer mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

68. As a further result of Defendant's discrimination, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

69. Defendant's acts, discriminatory patterns, and unlawful practices demonstrate a callous disregard and reckless indifference to Plaintiff that justifies an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant.

70. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay them a reasonable fee for their services.

a. Pursuant to 42 USC §1988, Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

71. Pursuant to Amendment 7 of the United States Constitution (and Rule 38(b) Fed. R. Civ. P., Rule 81(c) Fed. R. Civ. P.), Plaintiff respectfully requests that this honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

72. WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

- a. Declaring that Defendant violated §1981;
- b. Enjoining Defendant from committing further violations of the §1981;
- c. Awarding Plaintiff back pay and front pay, including interest, in the form of lost wages, including lost fringe benefits, which resulted from the illegal discrimination, harassment and wrongful termination.
- d. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).
- e. Awarding Plaintiff pre-judgment interest.
- f. Awarding Plaintiff punitive damages; and
- g. Awarding such other and further relief as is just, equitable, and proper.

Dated this 30th day of June 2020.

Respectfully submitted,

ELIAS MAKERE, FSA, MAAA

s/ Elias Makere, Pro Se

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

Tel: (904) 294-0026

E-mail: justice.actuarial@gmail.com

Endnotes:

^{1/} evidenced by electronic badge records.

^{2/} "minor" exams in the sense that they were not one of the 10 "actuarial" exams mentioned earlier. Specifically, these "minor" exams were the VEEs - necessary for obtaining actuarial credentials with the Society of Actuaries.

^{3/} in-or-around 2011, a former employee named Clare Latham charged Mr. Dickson with sexual discrimination.

^{4/} the DMAC is a course on decision-making and professionalism.

EXHIBIT A

Position Statement

From: Respondent
To: State Agency (FCHR)

[marked]



Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

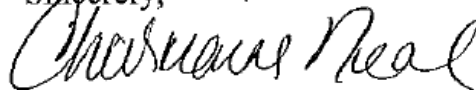


Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT B

Photo

Petitioner Receiving his FSA (final actuarial credential)



'A Picture Says a 1,000 Words'. This one says the following:

Allstate fired the black guy for slipping in front of his destination – which he later got to – but rewarded his non-black peers for not even coming close.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 05
PAGES 0220 - 0256

SHORT TITLE: Verified Complaint (*Makere v Early*)

DATE ENTERED: 5/14/2021

DOC TYPE: Party Filing

TRIBUNAL: Duval County, 4th Judicial Circuit (FL)

CASE NO: 16-2021-CA-002763-XXXX-MA

CASE CAPTION: *Makere v Early*

LINK: <http://core.duvalclerk.com>

DOC: 3

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA
(Plaintiff)

- against -

HON. E. GARY EARLY, ALJ
(Defendant)

VERIFIED CIVIL COMPLAINT

§768 FS, 42 USC §1983
May 14, 2021

JURY TRIAL DEMANDED

♪

Deep in the chambers of a state agency, a man cried foul of a corporation's conduct. With due speed, the agency transmitted his two fundamental sounds to a nearby hearing officer.

An officer, however, with corrupted hearing. An officer, however, who insisted that only one sound was made; eschewing the second for the echoed, stereotyped tales of his fathers.

*His perjurious actions were not sound. For they ran afoul of **the man** - and **the grounds** that constituted **the land** which his **forefathers found**.*

♪

TABLE OF CONTENTS

Preface	2
Table of Contents	3
I. Nature of Claim	4
II. Jurisdictional Amount	4
III. Parties	5
IV. Venue	5
V. Statutory Prerequisites	5
VI. Statement of Facts	6
VII. Ultimate Facts	11
VIII. Legal Application	12
Certificates (Compliance, Service, Good Faith)	18
Verified Oath	19
Exhibits	20

ABBREVIATIONS

ALJ	Administrative Law Judge
DOAH	Division of Administrative Hearings (Florida)
FCHR	Florida Commission on Human Relations
FS	Florida Statute (2020)

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT):

)

Division:

HON. E. GARY EARLY, ALJ

)

Jury Trial Demanded

Defendant,

)

☒ Yes | ☐ No

VERIFIED COMPLAINT

COMES NOW, Plaintiff, Elias Makere on this 14th day of May 2021 and hereby sues Defendant, the Honorable E. Gary Early, and states the following:

I. NATURE OF THE CLAIM

1. This action is brought under §768 FS (Torts) and 42 USC §1983 - the Ku Klux Klan Act of 1871 ("§1983") - to redress Defendant's unlawful conduct towards Plaintiff. Unlawful conduct that infringed on Plaintiff's constitutional rights (including but not limited to the 1st, 5th, and 14th amendments of the US Constitution).

II. JURISDICTION: AMOUNT

2. Pursuant to Art. V §5 FL Constitution and §48.193(1)(a) FS Plaintiff seeks declaratory relief, injunctive relief, and damages in excess of thirty thousand dollars (\$30,000) - exclusive of interest, costs, and attorney fees.

III. JURISDICTION: PARTIES

3. At all times material hereto, Plaintiff was a resident of Jacksonville, FL (Duval County).

4. Defendant - at various times material hereto - performed his work in Duval County. Furthermore, Defendant was an administrative law judge (see §120.65 FS) for Florida's Division of Administrative Hearings. A state agency for the territory's executive branch of government (see §20.22(2)(f) FS).

IV. JURISDICTION: VENUE

5. Pursuant to §47.011 FS, venue is properly laid in this tribunal.

V. STATUTORY PREREQUISITES

6. It appears that no administrative remedies need to be exhausted before initiating this lawsuit. Indeed, DOAH does not have a legal procedure for amending the unlawful conduct of its officers. As such, this lawsuit will be Defendant's first chance to atone for his actions; and therefore this matter is ripe for proceeding.

VI. STATEMENT OF THE FACTS

7. Plaintiff fell into Defendant's grasp by virtue of a lawsuit he filed against a private corporation. A brief review of that case is important for contextualizing Defendant's conduct.

Originating Lawsuit (State Agency, *Makere v Allstate*)

8. On June 30, 2017, Plaintiff filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1), he alleged that his former employer (Allstate Insurance Company) had violated his civil rights on the basis of race and sex (see Exhibit A).

9. On September 8, 2017, Allstate denied both allegations (see Exhibit B). Stating that it fired Plaintiff for a legitimate reason. Specifically, because he had failed an actuarial exam (see Exhibit C):

"Complainant was terminated solely because he failed his [FSA] exam."

- Allstate Insurance Company, 9/8/17

10. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race and sex were the basis of Plaintiff's complaint (see Exhibit D).

11. On January 19, 2018, Plaintiff filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see Exhibit E). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.

12. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Defendant became the administrative hearing officer over Plaintiff's case (circa November 13, 2018).

13.Despite the procedural incongruities, the facts continued to develop in Plaintiff's favor; heavily. Facts which included - but were not limited to:

- a. Unwanted date requests; racist dolls, racist characterizations;
- b. Cursing at Plaintiff for buying a condolence card;
- c. Death threats; smear campaigns; lethal attacks;

14.Importantly, Allstate made it known that many of its *other* employees had also failed exams. Yet, Allstate never fired any of them. This was the '*smoking gun*' for proving that Allstate's reason for terminating Plaintiff's employment was a pretext.

15.Moreover, at the hearing, three other revelations were cementing:

- a.Allstate granted the work-from-home privilege to its *other* employees. An accommodation it denied to Plaintiff on countless occasions.
- b.Allstate made Plaintiff pay \$1,025 for an actuarial exam fee; a payment it never required any of its *other* employees to make.
- c.Allstate paid Plaintiff an annual salary that was significantly lower than his similarly situated comparators.

16.These core facts rendered Plaintiff's lawsuit (against Allstate) a textbook case of employment discrimination. One which - unfortunately - ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).

17.Faced with these probative facts, Defendant went on the attack.

Defendant's Unlawful Conduct: (A) Spoliation of Evidence

18. On November 30, 2018, during the moments in which the payment disparity was being revealed (see ¶15b, *supra*), Defendant ordered Plaintiff to cease questioning.

19. After the hearing – around January 9, 2019 – Plaintiff asked Defendant for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation.

20. Two days later (January 11, 2019), Plaintiff received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (§15b) – and Defendant's cessation order.

a. It must be noted that DOAH's clerk told Plaintiff (over the phone) that Defendant was the person who scanned/photocopied the transcript.

b. It is also important to note that prior to this date, Plaintiff had never requested a hearing transcript on his case.

i. Plaintiff suspects that Defendant knew this, and was preying on Plaintiff's novice (Plaintiff was *pro se*).

21. Given these circumstances – and upon Plaintiff's information/belief – Defendant willfully and knowingly hid evidence.

Defendant's Unlawful Conduct: (B) Perjury

22. Defendant took it one step further, though, by making a wholesale removal of Plaintiff's sex discrimination charge.

23. On April 19, 2019, Defendant entered his Recommended Order ("RO").

24. The first page of the document had a section titled "*Statement of the Issue*". Where Defendant excluded Plaintiff's sex discrimination charge (see **Exhibit F**).

25. The second page had a section titled "*Preliminary Statement*". Where Defendant continued to exclude Plaintiff's sex discrimination charge. This time, however, Defendant made the fateful declaration that Defendant never complained of sex discrimination prior to the DOAH proceedings (see ¶11, *supra*) (see **Exhibit G**).

"[Plaintiff], also *for the first identifiable time*, alleged that Allstate, and in particular [Plaintiff's manager], engaged in sexually provocative and inappropriate behaviors, which [Plaintiff] alleged to be "sexual harassment and discrimination""

- The Honorable E. Gary Early, ALJ | 4/18/19 | Florida

26. Defendant repeated that highlighted line (ie, "*for the first identifiable time*") several more times throughout his authored RO.

27. The statement, of course, was false.

28. Plaintiff did charge Allstate with sex discrimination.

a. He did so in his original charge (6/30/17, see ¶8);

b. Allstate acknowledged the sex basis (9/8/17, ¶9); and

c. The FCHR explicitly ruled on the basis of sex (12/15/17, ¶10)

29. Nevertheless, the force and effect of Defendant's statement made the FCHR change its tune.

30. On June 27, 2019, the FCHR issued its Final Order ("FO"). In which it listed race as the only protected characteristic in Plaintiff's complaint (see **Exhibit H**); and adopted Defendant's ruling.

31. Defendant's lie had its intended effect.

32. Now, it is important to recognize that Defendant knew he was lying.

Defendant's Knowledge of the Truth

33. Prior to authoring his RO, Defendant deliberately acknowledged that the sex discrimination charge was in Plaintiff's originating complaint.

34. On February 6, 2019, Allstate moved Defendant to take official recognition of the FCHR's Determination (under §90.201 FS).^{1/}

35. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."

- The FCHR | 12/15/17 | Florida

36. On February 18, 2019, Defendant granted the motion. Thereby cementing - unequivocally - that he knew that Plaintiff charged Allstate with sex discrimination. He said the following (highlights added).

"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination: No Reasonable Cause, and of the Determination: No Reasonable Cause, both of which were issued by the Florida Commission on Human Relations on December 15, 2017. Those documents provided the point of entry to [Plaintiff] for this proceeding."

- The Honorable E. Gary Early, ALJ | February 18, 2019 | Florida

37. Thus, Defendant's repeated "statements" to the contrary were a known lie (a massive lie - in fact).

38. A lie that impacted the outcome of Plaintiff's lawsuit against Allstate. A case which sought monetary damages (among other things).

VII. ULTIMATE FACTS

39. Defendant broke the law in his quest to deny Plaintiff relief.

Defendant:

- a. hid evidence (see ¶18-21); and
- b. committed perjury (see ¶22-38).

40. Defendant was not performing a judicial function when he scanned/photocopied the case's transcript.

41. Defendant did not have authority to determine whether Plaintiff charged Allstate with race/sex discrimination; only the FCHR had such subject matter jurisdiction.

VIII. LEGAL APPLICATION

COUNT I: FIRST AMENDMENT RIGHT TO LEGAL PROTECTION | 42 USC §1983

42. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).
43. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to petition the State of Florida for a redress of his grievances against Allstate Insurance Company.
44. While acting under the color of state law (§120.569 FS, §120.65 FS), Defendant denied Plaintiff access to the state's court system (see §760.11(7) FS). An act that violated Plaintiff's First Amendment right (1st Amendment US Constitution).
45. Defendant did so via evidence tampering and perjury (§837.06 FS).

COUNT II: FIFTH AMENDMENT RIGHT TO DUE PROCESS | 42 USC §1983

46. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).
47. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to due process. It is well settled that a violation of due process occurs when an agency excludes/removes a legal basis from a claimant's discrimination charge.
48. Thus, while acting as a state hearing officer (§120.569 FS, §120.65), Defendant violated Plaintiff's constitutional rights (5th Amendment US Constitution) by criminally removing the sex discrimination basis from his complaint.

COUNT III: FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION | 42 USC §1983

49. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).

50. Defendant's unlawful actions (individually and in total) abridged Plaintiff's right to a fair trial on the matters litigated.

51. While acting as the administrative law judge on Plaintiff's case (ie, under the '*color of state law*' - §120.569 FS, §120.65 FS) - Defendant discriminatorily prevented Plaintiff from attaining the legal protections that Florida afforded other similarly-situated people.

52. Defendant did so when he (a) suppressed crucial evidence (§18-21); and (b) perjured himself (§22-38).

53. As such, Defendant violated Plaintiff's constitutional rights to the "equal protection of [§760.11 FS]" (14th Amendment US Constitution).

COUNT IV: SUPREMACY CLAUSE | 42 USC §1983

54. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).

55. Defendant's unlawful actions (individually and in total) breached Article VI Section 2 of the US Constitution (ie, the "Supremacy Clause"). He did so when he usurped the federal government's power to protect Plaintiff from 1st, 5th, and 14th amendment violations.

COUNT V: PERJURY

56. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).

57. Defendant - infused with the power bestowed upon him by statute - broke the law (§837.06 FS) by making a false statement of material fact. He sold his falsehood to another state agency - which was acting in its official capacity (§22-30).

58. That agency (the FCHR) bought his lie; and thereby cemented Defendant's violation of Plaintiff's constitutional rights (1st Amendment - access to the court; 5th Amendment - due process; 14th Amendment - equal protection; Art. VI §2 - supremacy clause).

COUNT VI: INTENTIONAL TORT | §768 FLORIDA STATUTES

59. Plaintiff hereby restates and realleges each and every factual allegation contained in Section VI (Paragraphs 7 through 41).

60. Defendant - at all times material hereto - knew that his actions would harm Plaintiff; and intended for his conduct to do just that. His unlawful actions exhibited malice, bad faith, and willful disdain for Plaintiff's civil rights.

IMMUNITY

61.The Doctrine of Judicial Immunity does not attach to this case for three fundamental reasons.

62.First, Defendant was not performing a judicial act. The evidence concealment that he committed while scanning the trial transcript was an administrative task which DOAH's clerical employees could have done.

63.Secondly, the matters that he forced himself onto were outside of his jurisdiction. It is well settled that the FCHR has sole jurisdiction over determining the subject matter of a discrimination complaint (ie, whether a complaint alleges age, race, sex, etc.).

64.Thirdly, and perhaps most importantly, Defendant broke the law (§837.06 FS - perjury). Immunity does not cover legal violations.

DAMAGES

65.As a direct and proximate result of said acts, Plaintiff has suffered - and continues to suffer - financial loss and loss of earning capacity. Plus, he has suffered (and continues to suffer) mental anguish, distress, pain, great expense, inconvenience, professional damage and other pecuniary and nonpecuniary losses.

66.As a further result of Defendant's constitutional breaches, Plaintiff has incurred legal fees and will continue to incur legal fees.

RESERVATION OF RIGHTS

67. Defendant's unlawful acts and discriminatory patterns demonstrate disdain for Plaintiff's rights; thereby justifying an award of punitive damages at trial. Upon an evidentiary showing and hearing, Plaintiff reserves the right to amend his pleadings to assert a claim for punitive damages against Defendant (please see §768.72 FS).

68. Plaintiff may retain an attorney to represent him in prosecuting this action and if so will be obligated to pay him/her a reasonable fee.

a. Pursuant to Chapter 57 FS (and 42 USC §1988), Plaintiff is entitled to request that the Court allow him to recover his reasonable attorney's fees incurred in successfully prosecuting this cause, should he retain an attorney.

REQUEST FOR JURY TRIAL

69. Pursuant to Art. I. §22 of the Florida Constitution (also see Rule 1.430 Fla. R. Civ. P., and the 7th Amendment of the United States Constitution), Plaintiff respectfully requests that this honorable Court grant him a trial by jury on all issues so triable.

REQUEST FOR RELIEF

70.WHEREFORE Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant on all claims herein, and enter an Order providing the following relief:

- a. Declaring that Defendant violated Title XLV Florida Statutes;
- b. Declaring that Defendant violated §1983;
- c. Enjoining Defendant from committing further violations of Title XLV and/or §1983;
- d. Awarding Plaintiff compensatory damages (back pay, front pay, including interest, lost fringe benefits, etc.) which Defendant's unlawful acts precluded him from obtaining.
- e. Awarding Plaintiff the cost of this action, together with reasonable attorney's fees (if any).
- f. Awarding Plaintiff pre-judgment interest.
- g. Awarding Plaintiff punitive damages; and
- h. Awarding such other and further relief as is just, equitable, and proper.



Dated this 14th day of May 2021.

Respectfully submitted,

/s/ Elias Makere

ELIAS MAKERE, FSA, MAAA, Plaintiff

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

P: (904) 294-0026

E: justice.actuarial@gmail.com

W: TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May 2021, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal.

CERTIFICATE OF GOOD FAITH

I HEREBY CERTIFY that pursuant to Rule 11 Fed. R. Civ. P. the foregoing (1) has been submitted in good faith; (2) is supported by existing law; (3) is supported by indisputable evidence (and will likely be compounded with further evidence); and (4) the complaint otherwise complies with the requirements of Rule 11.

/s/ Elias Makere

Verification Under Oath Pursuant to §92.525 FS and 28 USC §1746

I declare under penalty of perjury that the foregoing is true and correct. Moreover, the ultimate, material facts laid out above come from publicly available sources. Thus, they are not subject to dispute because *"they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"*. Some of the other facts are based on information and belief. These two elements come from my own personal observation, knowledge, and experience – coupled with circumstantial evidence of the matter.

Executed on this 14th day of May 2021.

UNITED STATES OF AMERICA



5/14/2021

Elias Makere, Plaintiff/Affiant

Endnotes:

^{1/} in the administrative realm, "official recognition" = "judicial notice"

Note: an electronic copy of this document can be downloaded from:
www.TextBookDiscrimination.com/Pages/Misc/EarlyPerjury/

EXHIBIT A

Charge of Discrimination

From: Plaintiff
To: State Agency (FCHR)
6/30/2017

[marked]

(first page only)

RACIAL DISCRIMINATION | ALLSTATE CORPORATION | FLORIDA | 6/30/2017

201701432

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

EMPLOYEMENT DISCRIMINATION

Racial Discrimination, Sex Discrimination

This document introduces the racial discrimination of a former Allstate employee. The discrimination involved racist dolls, epithets, hostility, ostracism, discrimination of terms/conditions/compensation, and termination. I am looking for justice, an examination of the facts, and an eradication of Allstate's racial discrimination.

RECEIVED
JUN 30 2017
2017 JUN 30 PM 12:32

EXHIBIT B

Position Statement

From: Allstate
To: State Agency (FCHR)
9/8/2017

(note: Allstate = Plaintiff's former employer)

[marked]

(first page only)



Charmaine Neal
Lead Consultant
Workforce Relations Team
Human Resources

September 8, 2017

Alicia Maxwell
Employment Investigator
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Charge No.: FCHR 201701432
Complainant: Elias Makere
Respondent: Allstate Insurance Company

Investigator Maxwell,

This letter sets forth the position of Respondent, Allstate Insurance Company ("Allstate"), regarding the above-referenced charge of discrimination. I am serving as the contact person; therefore, please address all communications to my attention.

The facts set forth in this letter are based upon a preliminary investigation of the circumstances of the allegations against Allstate.¹ It is Allstate's policy not to discriminate with regard to race, sex, age, national origin, sexual orientation, gender identity/gender expression, citizenship, disability, and status as a veteran with a disability or veteran of the Vietnam Era (Exhibit 1-Policy Guide). As outlined below, the allegations of discrimination based upon race and sex discrimination from Elias Makere (hereinafter "Ms. Makere" or "Complainant") are without merit.

FACTS

EXHIBIT C

Allstate's Termination Rationale
(ie, Allstate fired Plaintiff "solely" for failing an exam)

From: Defendant
To: State Agency (FCHR)
9/8/17

[marked]

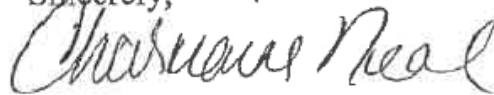
Complainant was terminated solely because he failed to pass his ASA exam and as a result, he became ineligible to maintain his status in the Allstate Financial Actuarial Career Program (ACP).

Lastly, Complainant's allegation that more African-American actuarial employees were involuntarily terminated is without merit. Complainant was the only employee that Respondent terminated in his department between 2014 and 2016.

CONCLUSION

Complainant's charge of discrimination based upon race without merit. Accordingly, Respondent requests that this Charge be dismissed in its entirety. Should you have any additional questions, please do not hesitate to contact me at (847) 402-7367.

Sincerely,



Charmaine Neal
Human Resources Lead Consultant

Attachments

Page 4 of 4

EXHIBIT D

Notice of Determination

From: State Agency (FCHR)
To: Plaintiff/Allstate/Defendant's Agency
12/15/2017

[marked]



Rick Scott
Governor

State of Florida
Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

4075 Esplanade Way • Room 110 • Tallahassee, Florida 32399-7020
(850) 488-7082 / FAX: (850) 487-1007

<http://fchr.state.fl.us>

United in One Goal: Equal Opportunity and Mutual Respect



Rebecca Steele
Chair
Michelle Wilson
Executive Director

FCHR No. 201701432

Mr. Elias Makere
3709 San Pable Road S., #701
Jacksonville, FL 32224

COMPLAINANT

Allstate Corporation
c/o Ms. Charmaine Neal, HR-Workforce Relations Lead Consultant
2775 Sanders Rd. F5
Northbrook, IL 60062

RESPONDENT

DETERMINATION: NO REASONABLE CAUSE

Complainant filed a complaint of discrimination alleging that Respondent violated the Florida Civil Rights Act of 1992. The Florida Commission on Human Relations has completed its investigation of this matter.

Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex. However, the investigation did not support Complainant's allegations. The investigation did not reveal enough evidence to establish that Complainant reported discriminatory harassment to Respondent. Complainant alleged that Respondent graded his required exams so that he would fail as an excuse to terminate him based on his race. However, the investigation revealed that the required exams were administered and graded anonymously by "The Society of Actuaries" and not Respondent. Therefore, the Respondent could not have been responsible for Complainant failing his exams. Complainant was terminated for failing his exam and not securing a non-actuarial position. The investigation did not reveal evidence of discrimination.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson

Dated: Dec. 15, 2017

EXHIBIT E

Petition for Relief

From: Plaintiff
To: State Agencies (FCHR/DOAH)
1/19/2018

[marked]

(first page only)

Elias Makere, ASA
3709 San Pablo Rd S, 701
Jacksonville, FL 32224

Phone 904.294.0026
Fax
Email inquiry.allstate@gmail.com

Allstate

PETITION SUPPLEMENT

Employment Discrimination (Race, Sex)

Here is the supplement to the Petition for Relief form. This document will begin with a description of the items in dispute. From there, the remaining pages exist to familiarize you with the case (legal elements, timeline, events, people, secured evidence, and requested evidence).

Petitioner: Elias Makere, Former Allstate Employee
Dates: April 2014 – October 2016
Race: Black
Sex: Male
Existence of Retaliation? Yes

000032

EXHIBIT F

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(Pages 1 and 2 only)

{Defendant's removal of sex discrimination charge}

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELIAS MAKERE,

Petitioner,

vs.

Case No. 18-0373

ALLSTATE INSURANCE COMPANY,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Jacksonville, Florida, on July 31, 2018, before Lawrence P. Stevenson, and on November 28 through 30, 2018, and January 29, 2019, before E. Gary Early, designated Administrative Law Judges of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Elias Makere, pro se
No. 701
3709 San Pablo Road South
Jacksonville, Florida 32224

For Respondent: Carmen Rodriguez, Esquire
Law Offices of Carmen Rodriguez, P.A.
Suite 411
15715 South Dixie Highway
Miami, Florida 33157

STATEMENT OF THE ISSUE

Whether Petitioner, Elias Makere, was subject to an unlawful employment practice by Respondent, Allstate Insurance

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT G

Recommended Order

From: Defendant
To: State Agency (FCHR)
4/19/2019

[marked]

(2nd page only)

{defendant's perjury}

Company ("Respondent" or "Allstate"), on account of his race or due to retaliation for his opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On June 30, 2017, Petitioner filed an eight-page complaint of discrimination ("Complaint of Discrimination") with the Florida Commission on Human Relations ("FCHR") which alleged that Respondent violated section 760.10 of the Florida Civil Rights Act of 1992 ("FCRA"), by discriminating against him on the basis of his race or as retaliation.

On December 15, 2017, the FCHR issued a Determination: No Cause, and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred.

On January 19, 2018, Petitioner filed a 231-page Petition for Relief (the "Petition") with the FCHR. The Petition included allegations of racial discrimination for which there is no evidence of their having been presented to FCHR or having been part of the FCHR investigation. The Petition also, for the first identifiable time, alleged that Allstate, and in particular Lisa Henry, engaged in sexually provocative and inappropriate behaviors, which Petitioner alleged to be "sexual harassment and discrimination." He alleged that "[t]he FCHR ignored these events."

EXHIBIT H

FCHR Final Order
Exclusion of Sex Discrimination Complaint

From: State Agency (FCHR)
To: Defendant/Plaintiff/Allstate
6/27/2019

[marked]

(first page only)

{end result of Defendant's 'massive lie'}

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELIAS MAKERE,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY

Respondent.

EEOC Case No. None

FCHR Case No. 2017-01432

DOAH Case No. 18-0373

FCHR Order No. 19-044

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Elias Makere filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent, Allstate Insurance Company, committed unlawful employment practices by harassing and terminating Petitioner on the basis of Petitioner's race (Black). Petitioner also alleged that Respondent unlawfully retaliated against Petitioner.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 06
PAGES 0257 - 0258

SHORT TITLE: Plaintiff's Motion in Limine

DATE ENTERED: 6/21/2021

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Middle District

CASE NO: 3:20-cv-00905-MMH-JRK

CASE CAPTION: *Makere v Allstate*

LINK: <http://ecf.flmd.uscourts.gov>

DOC: 60

Makere v. Allstate Insurance Company
Assigned to: Judge Marcia Morales Howard
Referred to: Magistrate Judge James R. Klindt
Case in other court: 21-10847, 03/12/2021
Cause: 42:1981 Job Discrimination (Race)

Date Filed: 08/12/2020
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Elias Makere
FSA, MAAA

represented by **Elias Makere**
3709 San Pablo Road S.
Apt 701
Jacksonville, FL 32224
904-294-0026
Email: Justice.Actuarial@gmail.com
PRO SE

V.

Defendant

Allstate Insurance Company

represented by **Kimberly J. Doud**
Littler Mendelson, PC
111 N Orange Ave Ste 1750
Orlando, FL 32801
407-393-2900
Fax: 407-393-2929
Email: kdoud@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michele Ann Ramos
Littler Mendelson PC
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Email: mramos@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Entered	#	Docket Text
06/11/2021	58	RESPONSE in Opposition re 55 MOTION for Miscellaneous Relief, specifically Judicial Notice of Unchanged Mailing Address filed by Allstate Insurance Company. (Doud, Kimberly) (Entered: 06/11/2021)
06/15/2021	59	MOTION for Sanctions by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Transcript A, # 6 Affidavit)(BGR) (Entered: 06/15/2021)
06/21/2021	60	MOTION In Limine by Elias Makere. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Affidavit)(BGR) (Entered: 06/21/2021)

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 07
PAGES 0259 - 0264

SHORT TITLE: Default

DATE ENTERED: 6/23/2021

DOC TYPE: Clerk Entry

TRIBUNAL: Duval County, 4th Judicial Circuit (FL)

CASE NO: 16-2021-CA-002763-XXXX-MA

CASE CAPTION: *Makere v Early*

LINK: <http://core.duvalclerk.com>

DOC: 11

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA

)

Plaintiff,

)

)

vs.

)

Case No (LT): 2021-CA-002763-XXXX

)

Division: CV-B

HON. E. GARY EARLY, ALJ

)

Defendant,

)

DEFAULT

Default is hereby entered in this action against Defendant,
HON. E. GARY EARLY, ALJ, - in his individual capacity - for failure
to respond as required by law.

Jun 23 2021

DATED ON: _____ 20 _____

JODY PHILLIPS // CLERK OF COURTS

Camela R. Phillips

Deputy Clerk

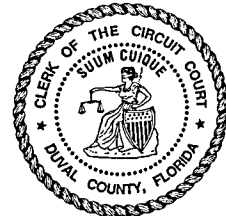


EXHIBIT A

Return of Service

Florida

In the Circuit Court, 4th Judicial Circuit, Duval County

16-2021-CA-002763-XXXX-MA

Makere v Early

\$768 FS, 42 USC §1983

Doc No 9

6/7/2021

[Pages 1-3 Only]

RETURN OF SERVICE

SHERIFF NUMBER: 21005020

PARTY TO BE SERVED
HON. E GARY EARLY
1230 APALACHEE PARKWAY
TALLAHASSEE, FL

ATTORNEY / PETITIONER

PLAINTIFF: ELIAS MAKERE
-VS-
DEFENDANT: HON. E GARY EARLY
TYPE OF WRIT: SUMMONS, COMPLAINT

COURT: CIRCUIT / DUVAL
CASE #: 2021-CA-002763-XXXX

COURT DATE:
COURT TIME:

Received the above-named writ on May 28, 2021, at 12:42 PM, and SERVED the same on the 1st day of June 2021, at 10:40 AM. Service was completed at 1230 APALACHEE PARKWAY TALLAHASSEE, FL in LEON County, Florida, as follows:

GOVERNMENTAL AGENCY / OFFICIAL / ASSOCIATION / CORPORATION

By delivering a true copy of this writ together with a copy of the initial pleadings, if any, with the date and hour of service endorsed thereon by me to Kaleed Abiola Security Guard as Registered Agent of the within named Defendant to-wit: HON. E GARY EARLY.

SERVICE COST: \$0.00
Y.W., CIVIL CLERK

WALT MCNEIL, SHERIFF
LEON COUNTY, FLORIDA

COURT:

DUVAL COUNTY CLERK OF COURT
SUITE 2338
JACKSONVILLE, FL 32202

BY: TB 1501
Process Server Tracie Baker, Badge # 1501

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

ELIAS MAKERE, FSA, MAAA

Plaintiff,

vs.

HON. E. GARY EARLY, ALJ

Defendant,

Case No (LT): 2021-CA-002763-XXXX

Division: CV-B

S U M M O N S

TO:

Hon. E. Gary Early, ALJ
1230 Apalachee Pkwy
Tallahassee, FL 32399

SERVED THIS 1 DAY OF June
20 21 AT 10:40 A.M. P.M.
WALT McNEIL, SHERIFF OF LEON COUNTY, FL
BY: [Signature] DS

A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached Complaint in this Court. A phone call will not protect you; your written response, including the above case number and named parties, must be filed if you want the Court to hear your case.

If you do not file your response on time, you may lose the case, and the Court may enter a default against you for the relief requested in the complaint. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail (or take a photocopy/carbon copy of) your written response to the Plaintiff:

Elias Makere, FSA, MAAA
3709 San Pablo Rd. S #701
Jacksonville, FL 32224
P: 904.294.0026
E: justice.actuarial@gmail.com

2021 MAY 11 11:34 AM

ACCEPTED: DUVAL COUNTY, JODY PHILLIPS, CLERK, 05/20/2021 09:44:30 AM

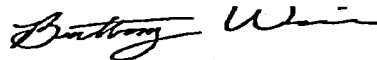
THE STATE OF FLORIDA:

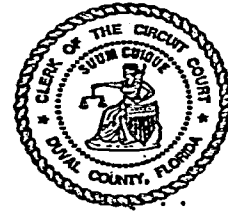
TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint in
this lawsuit on the above-named Defendant.

DATED ON: May 20 2021 20

Jody Phillips
Clerk of Court


Deputy Clerk



APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME SR
ITEM 08
PAGES 0265 - 0266

SHORT TITLE: <Case Activity>

DATE ENTERED: 12/14/2022

DOC TYPE: Party Filing

TRIBUNAL: US District Court, Florida, Middle District

CASE NO: 3:20-cv-00905-MMH-JRK

CASE CAPTION: *Makere v Allstate*

LINK: <http://ecf.flmd.uscourts.gov>

DOC: n/a

Makere v. Allstate Insurance Company
Assigned to: Judge Marcia Morales Howard
Referred to: Magistrate Judge Laura Lothman Lambert
Case in other court: 21-10847, 03/12/2021
USCA, 22-13588-A
Cause: 42:1981 Job Discrimination (Race)

Date Filed: 08/12/2020
Date Terminated: 01/05/2022
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Elias Makere
FSA, MAAA

represented by **Elias Makere**
P.O. Box 324
Hobart, IN 46342
904-294-0026
Email: Justice.Actuarial@gmail.com
PRO SE

V.

Defendant

Allstate Insurance Company

represented by **Kimberly J. Doud**
Littler Mendelson, PC
111 N Orange Ave Ste 1750
Orlando, FL 32801
407-393-2900
Fax: 407-393-2929
Email: kdoud@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michele Ann Ramos
Littler Mendelson PC
111 N. Orange Ave., Ste. 1750
Orlando, FL 32801
407-393-2942
Fax: 407-393-2929
Email: mramos@littler.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
10/24/2022	94	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 93 Notice of Interlocutory Appeal. (Attachments: # 1 Notice of appeal/Orders)(SJW) (Entered: 10/24/2022)
12/09/2022		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: 93 Notice of Interlocutory Appeal. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 22-13588-HH (SJW) (Entered: 12/09/2022)

SPECIFIC PUBLIC RECORDS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME	PR
ITEM	01
PAGES	0268-0269

SHORT TITLE: Pro Se Request for Transcript

DATE ENTERED: 6/13/2001

DOC TYPE: Public Record

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 01-000527

CASE CAPTION: *Frandsen v Florida Dept. of Env. Prot.*

LINK: <http://doah.state.fl.us>

Received Event (Event Succeeded)

Date: 6/12/01
Pages: 1
Remote CSID: 321 259 2297

Time: 5:32 PM
Sender: 321 259 2297

6-12-2001 5:30PM FROM FRANDSEN 321 259 2297

P. 1

By fax to 850-921-6847

12 June 2001

Re: Case #01-0527RX (Frandsen v. DEP),
Public Records Request for Copy of Transcript in Above Case

CAS

Ann Cole
Clerk of Court
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

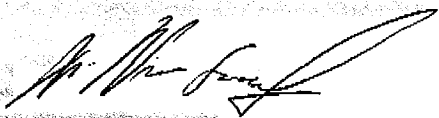
Dear Ms. Cole:

I request a copy of the transcript filed or soon to be filed in the above case.

A friend of mine, Dr. Paul LeValley, will do the copying, pay the bill and mail the transcript.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me.

Thank you,



Dr. Marvin Frandsen, Petitioner, Pro Se
4467 Country Rd.
Melbourne, FL 32934

(321) 494-0543 W
(321) 259-2297 H/fax

e-mail: marv-frandsen@cfl.rr.com

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME	PR
ITEM	02
PAGES	0270-294

SHORT TITLE: Recommended Order

DATE ENTERED: 6/15/2004

DOC TYPE: Public Record

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 03-004672

CASE CAPTION: *Cox v Univ of Florida*

LINK: <http://doah.state.fl.us>

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YVONNE C. COX,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-4672
	)	
UNIVERSITY OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case on March 11, 2004, in Gainesville, Florida, before the Division of Administrative Hearings, by its duly-assigned Administrative Law Judge, Ella Jane P. Davis.

APPEARANCES

For Petitioner: Yvonne C. Cox, pro se
Post Office Box 772
Williston, Florida 32696

For Respondent: Charles M. Deal, Esquire
University of Florida
123 Tigert Hall
Gainesville, Florida 32611-2703

STATEMENT OF THE ISSUE

Whether the Respondent is guilty of an unlawful employment practice against Petitioner on the basis of handicap.

PRELIMINARY STATEMENT

This cause was referred by the Florida Commission on Human Relations (Commission) to the Division of Administrative Hearings (Division) on or about December 11, 2003. The record adequately reflects all pre-trial motions and orders.

At the disputed-fact hearing on March 11, 2004, Exhibit ALJ-A, comprising the entire package referred to the Division by the Commission, was stipulated into evidence by the parties.

Petitioner testified on her own behalf and presented the oral testimony of Jackie Rollins, April Sontag, and Huston Seals. Petitioner would have called other witnesses but could not produce valid returns of service for their subpoenas. Therefore, the hearing was not continued or extended to permit her potential witnesses to be compelled to testify. After Petitioner was given the opportunity for an oral response, the undersigned orally granted a written Motion to Quash filed the previous day by one of Petitioner's potential witnesses who had been served less than 48 hours before the hearing. Exhibits P-2, P-3, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, and P-20, were admitted in evidence. Exhibits P-1, P-4, and P-5 were not admitted. After the record had closed, Petitioner orally moved to admit another exhibit. The motion was orally denied.

Respondent presented Petitioner's oral testimony and had Exhibits R-1, R-2, and R-3 admitted in evidence.

A Transcript was filed on March 26, 2004. Only Respondent filed a Proposed Recommended Order. It has been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. On July 17, 2003, Petitioner filed with the Commission a Charge of Discrimination, in which she complained only that Respondent University of Florida (Respondent or UF) discriminated multiple times by not hiring her on the basis of handicap (dyslexia). The last date of this alleged failure to hire was stated in the Charge as June 8, 2003. The Charge had been typed and signed on July 17, 2003. The Charge contained no allegation that Respondent had terminated Petitioner due to discrimination.

2. On October 27, 2003, the Commission entered its "Determination: No Cause." By its "Notice of Determination: No Cause" of the same date, the Commission notified Petitioner that she had 35 days in which to file her Petition for Relief.

3. The thirty-fifth day after the Determination: No Cause fell on Monday, December 1, 2003.

4. According to the Commission's date stamp, Petitioner filed her Petition with the Commission on December 3, 2003.

5. Petitioner became employed by CCR-Head Start in September 2003. On her job application to CCR-Head Start, she did not list Respondent as a prior employer.

6. The late Petition for Relief alleged, for the first time, that UF had jeopardized Petitioner's education and career opportunities in her job with CCR-Head Start, by character defamation against her and/or due to information that UF had not disclosed. Petitioner explained at hearing that this new allegation was intended to allege that UF had not provided course grades, CLAST results, and other general testing scores, and that UF had not provided a grade point average to Petitioner upon her request. (See Findings of Fact 21, and 23-25.) Again, the Petition contained no allegation that Respondent had terminated Petitioner due to handicap or for any other discriminatory reason.^{1/}

7. The late Petition for Relief further newly alleged that Petitioner's current employer, CCR-Head Start, had denied her a high-back chair, computer, desk, and business cards and was seeking ways to terminate her. This allegation against her current employer is totally extra-jurisdictional to these proceedings against Respondent UF.

8. At hearing, Petitioner extended her allegations to include that UF has prevented her being hired for numerous advertised positions inside and outside UF, spread over three

counties from 1999 to the date of hearing. At hearing, Petitioner also presented her view that in 1998-1999, while she was employed in UF's Horticultural Services Department, she was "persecuted" or "harassed" by her supervisor, Carolyn Reynolds, and other UF employees, due to cognitive comprehension problems, which she has self-diagnosed by unilateral computer research as "dyslexia." However, in addition to never having told anyone at UF that she is dyslexic, Petitioner testified that she also has never been professionally diagnosed as dyslexic.^{2/}

9. Petitioner graduated from high school prior to her employment with Respondent and began taking some college courses at Santa Fe Community College.

10. When Petitioner was first hired by Respondent in 1996, she scored 57 on a typing test, well above the passing score of 35.

11. On May 2, 2003, Petitioner achieved an AA degree from Central Florida Community College. Petitioner achieved this degree after she ceased to be employed by Respondent in 1999.

12. Petitioner was first employed with Respondent UF from 1997 to 1998 as a clerk in a medical area. In July 1997, she received a raise in salary. The single performance evaluation in evidence, which occurred during this period of time, shows improvement and rated her as satisfactory.

13. In 1998-1999, Petitioner was employed by Respondent UF in the Horticultural Sciences Department. She held a secretarial position involving preparing, typing, and processing travel request and reimbursement forms, handling room and vehicle reservations, and typing correspondence for several professors. Ms. Reynolds was Petitioner's immediate supervisor.

14. Despite graduating from high school and eventually junior college, Petitioner claims to have had "cognitive comprehension problems," especially with sequencing tasks and with mathematics, throughout her whole life. Petitioner also claims that while employed in UF's Horticultural Services Department, these problems required her to repeatedly ask her supervisor to repeat all instructions and to write out some instructions so that she could refer to them. She also claims she had to ask co-employees to interpret or rewrite her supervisor's instructions and to interpret and/or rewrite the written material her professors gave her to type. (See also Finding of Fact 18.) Petitioner never told anyone associated with UF in 1998-1999 that she was dyslexic or that she had "cognitive comprehension problems," and she had no reason to believe that anyone else told UF personnel that she was dyslexic.^{3/} Petitioner perceived her requests for help in the Horticultural Services Department as alerting UF personnel to her "condition." She perceived their compliance with her

requests as persecution and/or harassment. Yet, all the specific instances Petitioner described were of Ms. Reynolds and co-workers complying with her requests to repeat oral and written instructions. The co-workers who testified described Petitioner's requests as normal, or at least commonplace, because they understood that no one learns how to do everything at once and everyone sometimes needs help.^{4/}

15. Petitioner demonstrated no disability in general life activities, such as walking, talking, or seeing. At most, she testified to having difficulty with mathematics and limited or categorical employment activities involving sequencing tasks.

16. Petitioner assumed that her professors, supervisor, and co-workers in the Horticultural Services Department knew that she was dyslexic because the supervisor and co-workers had worked with her and accommodated her requests for help; because the professors let Ms. Reynolds evaluate her; and because of part of a conversation she overheard. (See Findings of Fact 14 and 17-18).

17. Petitioner came upon Ms. Reynolds and a co-employee, Tami Spurling, talking. When Petitioner entered the room, Ms. Reynolds was saying to Ms. Spurling, "Do I have to write everything down for you? Are you ADHA too?" Then Ms. Reynolds and Ms. Spurling stopped talking. Petitioner never confronted either woman about what Ms. Reynolds had meant. Rather, she

unilaterally inferred that the women stopped talking because they were talking about her. Petitioner also unilaterally inferred from Ms. Reynolds' comment about ADHA that both women knew or perceived Petitioner as dyslexic, or that Petitioner had some other type of learning disability, or that Petitioner had cognitive comprehension problems, whatever those might be. Petitioner's interpretation of this conversation is speculative and not a reasonable interpretation of the event.^{5/}

18. Petitioner believes that her professors in the Horticultural Services Department in 1998-1999 discriminated against her on the basis of handicap because they did not give her typing assignments as they did other secretaries and because they allowed Ms. Reynolds to evaluate Petitioner's job performance instead of evaluating her themselves. At hearing, Petitioner claimed for the first time that she was retaliated against because Ms. Reynolds forced her to resign in May 1999, (see Finding of Fact 19), because of her February 9, 1999, memo to Ms. Reynolds complaining that the professors were not giving her major typing assignments. Petitioner's memo was admitted in evidence. However, Petitioner presented no evidence that any other secretary got more or better typing assignments than she did; that anyone else in her position was evaluated by the professors instead of by Ms. Reynolds; that the professors ever

knew about her memo to Ms. Reynolds; or that Ms. Reynolds ever gave Petitioner a bad or unfair evaluation.

19. Petitioner testified that sometime in 1999, she became depressed from a combination of the work place "harassment," as she perceived it; the loss of her stepfather; and the loss of her pastor. Apparently, she was absent from work for awhile after February 1999. She testified that when she returned to work, she presented Ms. Reynolds with a doctor's excuse for home rest for two weeks, and Ms. Reynolds then berated her for an hour and a half and gave her an ultimatum to quit or be fired. Petitioner stated first that she resigned because of this alleged "ultimatum" and then testified that she resigned because she was depressed and confused from the medicine she was taking. However, Petitioner's doctor's note was not offered in evidence, and her self-serving testimony was not corroborated. Petitioner's May 27, 1999, resignation letter to Ms. Reynolds states that Petitioner's last day would be June 8, 1999, and gives no reason for quitting. It does not bespeak of coercion. Petitioner further testified that Ms. Reynolds prepared a letter for the UF Personnel Office to get permission to rehire Petitioner in less than 100 days, contrary to a UF rule. Petitioner put in evidence a memo from a different supervisor, Lynn Jernigan, showing that UF employed Petitioner on OPS at UF's Department of Physical Therapy until August 5, 1999, and at

that time, Petitioner refused Ms. Jernigan's request to keep Petitioner's name in the job hiring pool (P-13). Petitioner additionally put in evidence an exhibit that included a letter by Petitioner claiming to have been hired for a full-time job in UF's Physical Therapy Department.^{6/} Considering all of the foregoing, the undersigned is not persuaded that Petitioner was involuntarily terminated by Ms. Reynolds, effective either May 27, 1999, or June 8, 1999. At most, the evidence shows that after those dates, Petitioner was in an OPS position in a different department of UF, which position was not funded after August 5, 1999.

20. Petitioner did not present credible evidence to show that Ms. Reynolds or any UF employees "blackballed" her from being rehired by UF or by any other employer in three Florida counties between June 8, 1999 (her last day in UF's Horticultural Services Department), and the date of hearing. She was also vague about what position, if any, with UF she was turned down for on the only date (June 8, 2003) listed in her Charge of Discrimination. (Cf.--Finding of Fact 21 and its Endnotes, discussing other dates and allegations.) Petitioner is credible that she was not hired in numerous positions from August 1999 (when she left Ms. Jernigan's department) until she was hired in September 2003, by CCR-Head Start. However, she did not affirmatively demonstrate that Ms. Reynolds of the UF

Horticulture Services Department had hiring authority in any of the other UF departments Petitioner applied-to during this period of time. Petitioner conceded that Ms. Reynolds did not have hiring or firing authority in Ms. Jernigan's department, where Petitioner worked in August 1999. Petitioner did not know who made any of the hiring decisions rejecting her after she left Ms. Jernigan's department in 1999. Petitioner did not know who applied for any of the job openings within UF or with outside employers or who made the interview or hiring decisions for any of the jobs for which she applied. She did not present threshold evidence that she was minimally eligible for any of the jobs for which she applied or any evidence that the persons hired were less qualified than herself or were equally qualified but without a handicap. The possibility that a genuinely handicapped person was hired for each of these positions was not eliminated. The possibility that the jobs she applied for were not awarded to more qualified applicants was not eliminated. Finally, Petitioner did not demonstrate a nexus between any hiring decision of UF or any hiring decision of any other employer in the three-county area and her alleged handicap, and she showed no nexus between other potential UF supervisors or outside employers and her prior relationship with UF or Ms. Reynolds. Petitioner's mere speculations are not probative of discrimination.

21. For purposes of the present case, Petitioner filed a Charge of Discrimination with the Commission on July 17, 2003, alleging that she was last not hired for a job on June 8, 2003. (See Findings of Facts 1-4 and 6, and n. 1.) However, about June 24-25, 2003, Petitioner also signed a "Workforce Innovation Complaint" form of the Commission, alleging against UF "constant surveillance"; on-the-job harassment; not being hired; and sabotage of her home computer line. This form represented that UF's discrimination against her was "June 1999" and the latest discrimination was "estimated at June 24, 2003." When or if her lawyers on that case ever actually filed the Workforce Innovation Complaint with the Commission is not clear.^{7/} However, the same lawyers seem to have helped Petitioner get her UF employment records. (See Finding of Fact 25.) From the chronology, it is clear that neither Petitioner's separation from UF in 1999 nor any failure to hire her on June 8, 2003, could possibly have been the result of retaliation for her filing either the June 24, 2003, Workforce Innovation Complaint or the July 17, 2003, Charge of Discrimination.^{8/} Neither is there any credible evidence that Petitioner was not hired at any time thereafter as a result of filing either the Complaint or the Charge.

22. Petitioner testified, again without corroboration, that she had discussed her problems concerning Ms. Reynolds with

someone in the UF Personnel Office in 1999, had been persuaded that further action was not necessary, and had elected not to pursue her allegations of discrimination at that time. Given all the evidence, this statement is less than credible, but assuming, arguendo, that the conversation occurred, it would be unreasonable and illogical to suppose UF would interfere with Petitioner's subsequent attempts at employment for four years in retaliation for her not filing a charge of discrimination in 1999.

23. With regard to Petitioner's late claim that UF withheld papers from her, there is no evidence in this record that Respondent withheld any employment records that impeded Petitioner being hired by anyone, including but not limited to CCR-Head Start. UF employees would have to have been clairvoyant to even guess that Petitioner was applying to CCR-Head Start. (See Finding of Fact 5.)

24. Apparently, in 2002, Petitioner wanted some results of a CLAST test taken at her community college, but graded by UF. Exhibits in evidence show that UF permitted her to challenge these scores in April and August 2002, but the score was not changed. However, Petitioner put on no evidence that any portions of these standardized tests may legally be released to any test-taker. She did not demonstrate any reason that UF

would have her college grades, test scores, or grade point average from other institutions.

25. Petitioner testified that sometime in 2002, at the request of her lawyers for the Workforce Innovation Complaint, (see Finding of Fact 21), UF provided her with papers that purported to be her UF employment records but an UF employee removed some papers from the pile before handing the rest to her. Petitioner admitted that she did not know the UF employee and did not know what was in the pile of papers removed. Her only reason for believing UF misused her at that time was her unilateral belief that someone would not remove papers from a pile assembled for her lawyers unless they were hiding something from her. This is not a reasonable interpretation of the event described.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, only as discussed below, pursuant to Chapter 760, and Section 120.57(1), Florida Statutes.

27. The October 27, 2003, "Notice of Determination: No Cause" meant that Petitioner had 35 days, or until December 1, 2003 to timely file her Petition for Relief. She did not timely file her Petition for Relief on December 1, 2003. Because her

Petition for Relief was not filed until December 3, 2003, her entire case is time-barred and the Division is without jurisdiction of the entire case. See § 760.11(7), Fla. Stat; Garland v. Dept. of State, DOAH Case No. 00-1797 (RO: July 24, 2000; FO: February 8, 2001); McGill v. U.S. Marine/Bayliner Marine Corp., DOAH Case No. 95-6018 (RO: March 18, 1996; FO approved); Hall v. Boeing Aerospace Operation, DOAH Case No. 94-6976 (RO: March 29, 1995; FO approved); Wright v. HCA Central Florida Regional Hospital, Inc., DOAH Case No. 94-0070 (RO: July 27, 1995; FO: January 26, 1995); Pusey v. Knapp, DOAH Case No. 96-3321 (RO: November 25, 1996; FO: October 16, 1997).

28. Assuming, arguendo, but not ruling, that the Petition had been filed on time, this Recommended Order still could not address any events that occurred before July 18, 2002. Because Petitioner filed her Charge of Discrimination on July 17, 2003, any events more than 365 days prior to the date her charge was filed could not be considered either by the Commission or the Division. This is a statute of limitations. See § 760.11(1), Fla. Stat; Burt v. City of Tallahassee, DOAH Case No. 03-2456 (RO of Dismissal: September 23, 2003; FO: April 15, 2004); Greene v. Seminole Electric Cooperative, Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Florida State University v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Florida Dept of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); and St. Petersburg

Motor Club v. Cook, 567 So. 2d 488 (Fla. 2d DCA 1990).

Accordingly, Petitioner's separation from her employment with Respondent in August 1999 or on June 8, 1999, her allegedly forced or duped resignation letter of May 27, 1999, and her treatment during her 1997-1999 employment with Respondent may not be considered in this case.^{9/} Regardless, Petitioner has failed, on the merits, to establish any discrimination related to these time-barred events.

29. Assuming, arguendo, but not ruling, that the Petition had been filed on time and that this case could be decided on the remaining issues, the Division does not have jurisdiction of any new charges added into the Petition for Relief or that were presented for the first time at hearing if they could have been raised in the Charge of Discrimination. New or different types of discrimination cannot be alleged in the Petition for Relief or at the disputed-fact hearing under Section 120.57(1), Florida Statutes, unless they have been alleged in the Charge of Discrimination. The Commission must first investigate the allegations of the Charge, and only when the Commission has entered its "proposed final agency action," by way of a "determination" of cause or no cause on the contents of the Charge, may a Petition for Relief attacking that proposed final agency action be filed. Young v. Dept. of Business and Professional Regulation, DOAH Case No. 03-1140 (R0: July 1,

2003; FO: February 26, 2004); Ward v. Florida Dept. of Juvenile Justice, 212 F. Supp 2d 1349 (N. D. Fla. 2002); Luke v. Pic 'N' Save Drug Co., Inc., DOAH Case No. 94-0294 (RO: August 25, 1994; FO: December 8, 1995); Austin v. Florida Power Corp., DOAH Case No. 90-5137 (RO: June 20, 1991; FO: October 24, 1991, filed October 30, 1991).

30. The only possible exceptions to the foregoing ruling is where the type of discrimination alleged in the Charge continued in an on-going pattern to, and/or beyond the date of the Petition or where there was a subsequent retaliation by the employer against the employee for pursuing or filing the Charge itself. However, this is an extremely narrow exception, and the vagueness and ever-changing nature of Petitioner's theories should not be rewarded. Lieberman v. Miami-Dade County, 2000 WL 1717649. Regardless, neither of these theories of the case has been established by any standard of proof. No retaliation was proven. No pattern of "blackballing" was proven. Most important of all, no "handicap" or discrimination on the basis of handicap was proven.

31. Pursuant to Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994), Petitioner must prove the following in order to establish a prima facie case of handicap discrimination:

A. He is handicapped within the meaning of the Florida Civil Rights Act;

B. He was otherwise qualified for his job; and

C. He was harassed, terminated, (or, in this case, not hired) solely by reason of his handicap.

32. This Petitioner is not statutorily handicapped (disabled) because her condition, whatever it is, does not substantially limit her major life activities under the test employed in Toyota Motor Mfg., Kentucky, Inc. v. Williams, 112 S. Ct. 681 (2002). "Handicap" for our purposes here, as well as "disability" under the Americans With Disabilities Act, must extend to life activities, not just limited or categorical employment activities. See Sutton v. United Air Lines, Inc., 19 S. Ct. 2139, 527 U.S. 471 (1999). No one with hiring authority at UF seems to have even perceived Petitioner as handicapped, but regardless, Petitioner's sequencing and memory problems seem to have been accommodated each time she requested help. See Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994); Cabany v. Hollywood Memorial Hospital, 12 FALR 2020 (FCHR 1990) Kelly v. Bechtel Power Corp., 633 F. Supp 927 (S.D. Fla. 1986). They clearly do not appear to be adverse employment actions. See Mattern v. Eastman Kodak Company, 104 F.3d 702 (5th Cir. 1997); Landgraf v. USF Film Products, 968 F.2d 427 (5th Cir. 1992).

33. No prima facie case of discrimination on the basis of handicap was established with regard to June 8, 2003, the only date alleged in the Charge of Discrimination, or any other dates. Petitioner has been unsuccessful in getting hired for positions at UF and with a variety of employers, in three counties but her lack of success is not necessarily linked to any lack of ability on Petitioner's part or to any condition that impairs her every day living. It also has not been linked to any discriminatory efforts of Respondent UF. Sometimes, getting a job is just the luck of the draw. Where the evidence establishes neither a handicap nor that a similarly situated, equally qualified, non-handicapped person was hired, the case must fail on the merits.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED: that the Florida Commission on Human Relations enter a final order dismissing the Charge of Discrimination and Petition for Relief.

DONE AND ENTERED this 15th day of June, 2004, in
Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of June, 2004.

ENDNOTES

^{1/} Exhibit ALJ-A, comprising the entire package referred to the Division by the Commission, was stipulated into evidence by the parties. It is deemed to be the most accurate evidence. Findings of Fact 1-4 and 6 are based thereon. However, it is noted that Exhibit P-12, also in evidence, constitutes a handwritten Charge of Discrimination which Petitioner purportedly signed on July 1, 2003, stating that the last date of discrimination was "estimated" to be August 27, 2002. Exhibit P-12 was date stamped-in by the Commission on July 9, 2003, not July 17, 2003.

^{2/} Petitioner's Exhibits P-1, P-4, and P-5 are unreliable hearsay documents and were not admitted in evidence because no medical, psychological, or vocational expert with first-hand knowledge of their contents or with the ability to interpret their contents appeared for confrontation/examination by Respondent. However, in an abundance of caution, they have been treated as proffers. Even as proffers, these exhibits do not support Petitioner's contention in her pleadings that she has

been professionally diagnosed with dyslexia or her position at hearing that she suffers from another cognitive comprehension condition that qualifies as a "handicap." (See Conclusions of Law.)

P-4 is a May 17, 1993 UF Health Sciences Center, Department of Psychiatry report rendered to Petitioner's supervisor at Santa Fe Community College where Petitioner was then working. There is no reason to suppose that any of Petitioner's professors, supervisors, or co-workers at UF in 1996-1999 saw or knew of this report. One of the testers noted that Petitioner was mildly "dyspraxic" ("having difficulty recalling program for use of utensil into learned act sequence"), not "dyslexic." She tested in the low range of intellectual functioning.

P-5 is a March 5, 2002 Good Will report for a Vocational Rehabilitation office, which UF could not have had in 1996-1999. It relates that Petitioner claimed to have dyslexia and referred her for further testing to determine if she has a learning disability in mathematics.

P-1 is a May 12, 2002 report by Clinical Psychology Associates, which UF also could not have had in 1996-1999. It relates that Petitioner provided a "family history" of ADHA (attention deficit hyperactivity disorder); this would not constitute Petitioner's own personal medical history. Its tester diagnosed that Petitioner had an undefined "cognitive problem"; that her math and spelling problems arose while she was at Santa Fe Community College; that she did not meet the legal scale for a learning disability; and that she had a low average IQ.

One or more of these exhibits refer to Petitioner's providing a personal history of having problems with sequencing, especially with math, for most of her life but being able to deal with the problem until she was forced to take college level math courses. One or more of these exhibits use terms such as "cognitive problem" "comprehension problem," or "cognitive comprehension problem." None of these terms was demonstrated to be a standard, recognized diagnosis. No diagnosis of dyslexia or any other learning disability was assigned through any of these tests, although subsequent tests were recommended.

^{3/} See n. 2, above, concerning unadmitted P-4, a 1993 psychiatric report. There is no reason to suppose that any of Petitioner's professors, supervisors, or co-workers at UF in 1996-1999 saw or knew of this report.

4/ Had there been any clear proof that Respondent knew or even falsely perceived that Petitioner was afflicted with dyslexia or even perceived her to have a handicap, which there was not, these acts of assistance would amount to "reasonable accommodations." (See Conclusions of Law).

5/ "ADHA" stands for "attention deficit hyper-activity disorder." Petitioner has never alleged that she has ADHA. She has not been diagnosed with ADHA. (See also, n. 2, above.

6/ In connection with her Workforce Innovation Complaint, discussed in Finding of Fact 21, infra, Petitioner wrote a letter stating that after being fired, she was "hired on a full time job in the Physical Therapy Department but due to hierarchy influences I was tricked into signing an OPS form for a senior clerk/part-time job while being trained and focusing my attention on my trainer or make me loose [sic] sight of what I was actually signing. All this happened after I was hired as a full-time secretary." (P-11)

7/ The Workforce Innovation Complaint, which claimed discrimination occurred last on June 24, 2003, bears a date stamp of June 33 [sic.], 2003, for the "Agency for Workforce Innovation, Office for Civil Rights," at the same address as the Commission.

Interestingly enough, Petitioner's lawyers believed, contrary to the evidence in this case, that Petitioner was employed by UF in the Horticulture Sciences Department from 1996-1997 and at the UF Mercy Area Housing Department from 1997-1999. (See Findings of Fact 10-13.)

8/ See nn. 2 and 7, above.

Even if one chooses the dates in P-12 or in the Workforce Innovation Complaint, the chronology does not establish retaliation.

Also, an abundance of caution, unadmitted Exhibit P-5 has been treated as a proffer in the context of Petitioner's testimony that UF knew after March 5, 2002 that she was dyslexic from her request that UF pay for the vocational retraining recommended in that document and retaliated by "blackballing" her. Exhibit P-5 is a March 2002 Good Will evaluation of Petitioner's capabilities, which recommended that she retrain for a career other than as a secretary. First, the exhibit does

not reflect that it ever went to UF. Even if it could be inferred therefrom that someone, somewhere within UF, knew, as of March 5, 2002, that Petitioner had some kind of problem, the document does not define "cognitive comprehension problem" and does not diagnose dyslexia. In the absence of something more, neither the March 5, 2002, report nor a request for vocational retraining by a non-employee at that point in time is sufficient to establish a nexus for handicap discrimination in the Horticultural Sciences Department in 1998-1999, for a failure to hire before its date, for alleged "blackballing" before its date, or to prove-up any retaliation discrimination in hiring practices after its date. (See Findings of Fact 19-20.) A Good Will evaluation or a request for training, by a non-employee, if such request was ever made, is not a protected employee action for which any type of retaliation discrimination claim after its date may lie.

^{9/} The different dates from P-12 recited in n. 1 would not alter this ruling.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME	PR
ITEM	03
PAGES	0295-296

SHORT TITLE: Clerk's Transmission of Transcript

DATE ENTERED: 10/12/2004

DOC TYPE: Public Record

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 03-004478

CASE CAPTION: *Reynolds v Florida Dept. of Env. Prot.*

LINK: <http://doah.state.fl.us>

October 12, 2004

Kathy C. Carter, Agency Clerk
Department of Environmental Protection
Office of the General Counsel
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Re: Shirley A. Reynolds and Diann P. Bowman vs. Board of
Trustees of the Internal Improvement Trust Fund and
Department of Environmental Protection
DOAH Case No. 03-4478RU
Final Order issued February 20, 2004

Dear Ms. Carter:

The above-referenced case has met its retention schedule with the Division of Administrative Hearings, which is to retain the file for six months after closure. In lieu of destruction, I am forwarding the two-volume transcript and exhibits to your attention. You may retain or dispose of these records as you deem appropriate.

If you have any questions, please feel free to contact me.

Sincerely,



ANN COLE
Clerk of the Division

/ac

Enclosures

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME PR
ITEM 04
PAGES 0297-0298

SHORT TITLE: Staff Member's Transmission of Transcript

DATE ENTERED: 10/22/2007

DOC TYPE: Public Record

TRIBUNAL: Division of Administrative Hearings (FL)

CASE NO: 07-000564

CASE CAPTION: *Lakeland v SWFL WMD*

LINK: <http://doah.state.fl.us>



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SUNCOM 572-6200

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Chair, Hernando

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Vice Chair, Polk

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DeSoto

David L. Moore

Executive Director

William S. Bilenky

General Counsel

VIA Overnight Mail

October 19, 2007

Clerk's Office

Florida Division of Administrative Hearings

The Desoto Building

1230 Apalachee Parkway

Tallahassee, FL 32399-3060

SUBJECT: City of Lakeland vs. Southwest Florida Water Management District;
DOAH Case No. 07-0564

Dear Clerk:

The court reporters assigned to transcribe the final hearing in the above matter were instructed to file a certified copy of the final hearing transcript with the Division of Administrative Hearings. One court reporter, Liz Nieves, previously filed Transcript Volumes I – VI and X for the days she covered. The other court reporter assigned to this final hearing never filed the certified transcripts for the days she covered. Therefore, the Southwest Florida Water Management District has hereby enclosed for filing Original Transcript Volumes VII, VIII, and IX.

If you have any questions, please do not hesitate to call me. My number is 352-796-7211, ext. 4156.

Sincerely,

Pamela A. Gifford

Pamela A. Gifford, CLA
Certified Legal Assistant
Office of General Counsel

Enclosures

cc: Honorable T. Kent Wetherall, II (w/o enclosures)
Segundo Fernandez, Esquire (w/o enclosures)
Dominick Graziano, Esquire (w/o enclosures)

FILED
2007 OCT 22 P 1:45
DIVISION OF
ADMINISTRATIVE
HEARINGS

APPENDIX

11TH CIRCUIT COURT OF APPEALS

22-13613-H

Appeal From

US District Court, Florida, Northern District

4:21-cv-00096

Makere v Early

VOLUME PR
ITEM 05
PAGES 0299-0300

SHORT TITLE: Order Directing Litigant to Handle Transcript

DATE ENTERED: 8/20/2008

DOC TYPE: Public Record

TRIBUNAL: Florida's First District Court of Appeals

CASE NO: 1D08-0809

CASE CAPTION: *Phillips v FL DCFS*

LINK: <http://onlinedocketsdca.flcourts.org>

DISTRICT COURT OF APPEAL, FIRST DISTRICT
301 S. Martin Luther King, Jr. Blvd.
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

FILED

2008 AUG 20 P 12:17

DIVISION OF
ADMINISTRATIVE
HEARINGS

August 19, 2008

CASE NO.: 1D08-809
L.T. No. : 07-1969-RU

Larry Phillips

v. Florida Department Of
Children And Families

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for transcript, filed July 21, 2008, is treated by the court as a motion to supplement the record with a transcript of the final hearing conducted on October 3, 2007, and is granted. Appellee is directed to ensure preparation and filing of the transcript within 30 days of the date hereof, and shall contemporaneously provide a copy of the transcript to appellant. Within 10 days following filing of the transcript, the clerk of the lower tribunal shall prepare and transmit a supplemental record. Time for service of appellant's initial brief is extended to 30 days following transmittal of the supplemental record.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

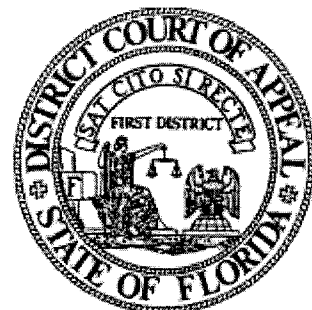
Larry Phillips
Claudia Llado, Clerk

Gregory D. Venz, A.G.C.

John Copelan, G. C.

am


JON S. WHEELER, CLERK



CIP

United States Court of Appeals
Eleventh Circuit

22-13613-H
Makere v Early

{unchanged}

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Early, 22-13613

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Lower Tribunal:

Cannon, Hope

Magistrate

Winsor, Allen

District Judge

Non-Parties:

Allstate Insurance Company (NYSE: ALL)

Division of Administrative Hearings (FL)

Florida Commission on Human Relations

Gorsica, Stanley G. (FL)

Parties:

Early, Hon. E. Gary (ALJ)

Appellee/Defendant

Makere, Elias (FSA, MAAA)

Appellant/Plaintiff

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December 2022, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

Link to Underlying Complaint ([HTML](#), [PDF](#), [Video](#))

HTML	TextBookDiscrimination.com/Info/Misc/ALJPerjury/Complaint-Amended.html
PDF	TextBookDiscrimination.com/Files/USFLND/21000096 AAC 20211231 123954.pdf
Video	https://youtu.be/ RaJXfXOCE

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/CA11/22013613 ADD 20221212 104431.pdf

TextBookDiscrimination.com/Files/CA11/22013613 IB 20221212 104432.pdf

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(appearing on behalf of Defendant/Appellee)

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