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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA	)	Case No (LT)
Plaintiff	)	3:20-cv-00905-MMH-LLL
	)	
v.	)	
	)	
ALLSTATE INSURANCE COMPANY,	)	
Defendant	)	

PLAINTIFF’S MOTION FOR CLARIFICATION

Plaintiff, ELIAS MAKERE, on this 7th day of July 2023, respectfully asks this Honorable Court to clarify one aspect of its recent order. An order docketed with the title: “*ORDER granting, in part, and denying, in part, [78] Defendant's... The stay is lifted... reopen the case...*” (hereinafter “That Order”).[1](#)

Key Points:

A.) Points	manifestation of a clear error; clarification only
B.) Grounds	streamline proceedings; prevent manifest injustice;

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Background: Court made a clear error in an earlier order (≈ 2021)
 Problem: Court's recent order(s) never explicitly amended error
 Request: This Court clarifies whether the original error operates

Rule 1 | Fed. R. Civ. P. | Scope and Purpose

"[These rules of civil procedure] should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Rule 60(a) | Fed. R. Civ. P. | Corrections Based on Clerical...

"The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice."

Burton v Johnson, 975 F.2d 690 (10th Cir. 1992)

"A District Court is not limited under Rule 60(a) to the correction of clerical mistakes arising from oversight or omission. Rather, a district court may also invoke Rule 60(a) to resolve an ambiguity in its original order to more clearly reflect its contemporaneous intent and ensure that the court's purpose is fully implemented."

Precedence

- 6:17-cv-01587-PGB-GJK - USFLMD (1/8/19)
- 3:10-cr-00017-MMH-JRK - USFLMD (7/24/20)
- 3:20-cv-00889-MMH-JRK - USFLMD (9/3/21)
- 2:20-cv-00430-JLB-MRM - USFLMD (11/10/21)
- 8:11-cv-00176-SCB-AEP - USFLMD (12/6/21)
- 8:21-cv-01751-CEH-JSS - USFLMD (11/14/22)
- 2:23-cv-00062-SPC-KCD - USFLMD (3/15/23)

USFLMD recently granted motions for clarification

Abbreviations

- {#XX} - Docket Entry XX
- EEOC - Equal Employment Opportunity Commission
- FCHR - Florida Commission on Human Relations
- FCRA - Florida Civil Rights Act (as amended)
- FS - Florida Statute
- USFLMD - US District Court, Florida, Middle District

Preliminary Matters

1. This is not a motion for reconsideration (housed in Rules 59(e) and/or 60(b)).
2. Nor is this a motion for relief from judgment (housed in Rule 60(b)).
3. Moreover, this is neither a written objection (Rule 72)) nor a motion to vacate (Rule 60(b)).
4. Instead, this is only a motion seeking clarification on one aspect of That Order. Namely, That Order's directives on Plaintiff's FCRA charges.
5. Herein, **Plaintiff merely asks whether That Order's dismissal of Plaintiff's FCRA charges was based on administrative timeliness.**

MOTION

I. Pertinent History

6. On April 10, 2019, Plaintiff dual-filed his Charge of Discrimination with the EEOC and the FCHR. In it, he charged Defendant with employment discrimination on the bases of color, race, retaliation, and sex. The FCHR received it the same day, and blessed it with a 2:35PM timestamp.
7. On August 12, 2020, Plaintiff initiated this lawsuit; suing Defendant under both federal and state law (42 USC §1981, FCRA). After significant effort (and compliance), Plaintiff moved to attach his Title VII charges (see ¶6).^{2/}
8. On February 8, 2021, this Court entered an order of partial dismissal {#40}.

9. Fourteen days later – on February 22, 2021 – Plaintiff filed his objections {#44}. Objections which were grounded on this Court’s use of an erroneous administrative filing date (§6 *supra*).
10. Subsequent to objecting, Plaintiff filed two motions (aimed at curing the deliberate injustices that Defendant was attempting to capitalize on).
 - a. The first – filed on June 11, 2021 – was a motion for sanctions {#59}.
 - b. While the second was a *motion in limine* (June 17, 2021) {#60}.
11. Notwithstanding, on October 13, 2021, this Court directed Plaintiff to amend his complaint – to include “all” charges {#70}. He duly obliged {#73}. Given his unresolved objection (§9), though, Plaintiff reincorporated his [previously-dismissed] FCRA charges (please also see §15 *infra*).
12. A year later – and twenty (20) months after its partial dismissal order (§8 *supra*) – this Court overruled Plaintiff’s objections (§9 *supra*). Doing so on October 14, 2022 {#91}.
13. Thus, Plaintiff filed a notice of interlocutory appeal (October 19, 2022) {#93}.
14. On December 5, 2022, Plaintiff briefed the 11th Circuit; basing his appeal on two issues. The pertinent one being the objected-to matter of the administrative filing date (§9 *supra*).
15. Yet, nine days later (ie, December 14, 2022), the 11th Circuit relinquished jurisdiction; stating – crucially – that “*the entirety of [Plaintiff’s] third amended complaint [was still] pending*”.[3/](#)

16. So, after Plaintiff's FCRA charges pended for another six months, this Court entered That Order (June 21, 2023) {#96}. Thereby dismissing Plaintiff's FCRA charges (Counts I-IV).
17. Now, today (ie, July 7, 2023), Plaintiff seeks clarification on this Court's intended rationale (behind those FCRA dismissals).

II. Analysis

18. The objected-to issue deals with Plaintiff's administrative filing date (§6 *supra*).
19. In its February 2021 order (§8 *supra*), this Court dismissed Plaintiff's FCRA charges; doing so on account of administrative timeliness (highlights added):

"In sum, the record establishes that the FCHR rendered timely "No Cause" determinations on [Plaintiff's state] charges... As such, [Plaintiff] is administratively barred under section 760.11(7) of the Florida Statutes from pursuing his [state] claims here. The Court will [dismiss] Counts I-III of the Complaint and dismiss the [state] claims in their entirety."

– USFLMD | 2/8/21 | {#40}

20. This Court's above-quoted ruling was based on a determination that the FCHR had rendered a decision within the 180-day statutory window (highlights added):

“As set forth above, the FCHR issued a “No Cause” determination regarding the 2019 FCHR Charge on October 18, 2019, within the 180-day period.”

– USFLMD | 2/8/21 | {#40}

21. That 180-day calculation, importantly, was based on a starting date of April 26, 2019 (highlights added):

“[Plaintiff] filed a second charge of discrimination with the FCHR, which was received on April 26, 2019.”

– USFLMD | 2/8/21 | {#40}

22. The problem, of course, was that **the starting date (ie, 4/26/19) was wrong.**

a. Plaintiff filed his administrative complaint on April 10, 2019. The FCHR ‘*actually received*’ it that day; evidenced by the stamp it placed on the first page (§6 *supra*).

23. **The difference** between the correct date (4/10) and the incorrect date (4/26) **is/was vital**. The incorrect date fell within the 180-day investigatory window, while the correct date did not.

a. Indeed, October 18, 2019 marked the date that the FCHR wrote its determination (§20 *supra*).^{4/}

b. 10/18/19 minus 4/26/19 equals 175.

c. 10/18/19 minus 4/10/19 equals 191.

24. According to statute, the FCHR has authority to enter determinations within the 180-day window (highlights added):

“(3)...Within 180 days of the filing of the complaint, the [FCHR] shall determine if there is reasonable cause to believe that discriminatory practice has occurred...”

– §760.11(3) FS

25. However, once that six-month period ends, the state agency loses such power (highlights added):

“(4)... In the event that the commission determines that there is reasonable cause... the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(8) In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause.”

– §760.11(4) FS, §760.11(8) FS

The FCHR could-not/cannot contravene this statute [even with a late-filed notice of determination] (please accord Demario v Franklin, 648 So. 2d 210 (Fla. 4th DCA)).

26. Florida’s Supreme Court went on to say that the 180-day cut-off renders any late-filed FCHR determination null & void (highlights added):

“Reading the relevant provisions of the statute together clearly establishes that whenever the FCHR fails to make its determination within 180 days, even if the untimely determination is made before the filing of a lawsuit, the claimant may proceed to file a lawsuit under subsection (4).”

– Woodham v BCBSFL, 829 So.2d 891 (Fla. 2002)

27. Thus, once the 180-day window closes (regardless of any untimely FCHR determination), plaintiffs are no longer bound by state administrative proceedings. Instead, they are given 1-year to file suit (§760.11(4) FS) (which is what Plaintiff did – ¶7 *supra*).

28. In fact, this Court acknowledged that the closure of the 180-day window releases litigants from the bindings of state administrative proceedings (highlights added):

“As stated above, unless the FCHR fails to issue a determination in 180 days, a claimant must successfully complete the administrative review process before he can pursue a claim in court.”

– USFLMD | 2/8/21 | {#40}

In the instant case, the FCHR did indeed fail to issue its determination within the 180-day window (¶23b *supra*).

29. So, these statutes and Supreme Court holdings fit the facts of this matter perfectly. And they showcase the materiality of the error-at-hand.

a. By using the incorrect date (§21 *supra*), this Court determined that the FCHR's late notice of determination was valid. That false validity led this Court to **conclude** that Plaintiff's state charges were administratively barred (§19 *supra*).

b. Instead, had this Court used the correct date (§6, §22 *supra*) then it would have found that the FCHR's 180-day window had closed. A finding that would have **precluded** any ruling that Plaintiff's charges were administratively barred (§19 *supra*).

30. Simply put, this Court used the wrong date. This was clear (4/10 vs 4/26).

31. The error was material to its ruling (§19-21 *supra*).

32. These material facts – by way of legal operation – will imbue a reviewing body with '*the definite and firm conviction*' that a mistake was made (Hybritech v. Monoclonal, 802 F.2d 1367 (1986)).

III. Application to the Instant Case

33. Plaintiff disclosed this error [more than] two years ago (§9 *supra*). The error has obstructed his case since then, and its ambiguous presence will manifest further injustice onto Plaintiff.
34. According to federal appellate courts, a ruling that is based on a materially incorrect starting date constitutes a “*manifest injustice*” (please see Agro Dutch v USA, 589 F.3d 1187 (Fed. Cir. 2009))).

IV. Nature of Relief Sought

35. Thus, Plaintiff asks this Honorable Court to state whether That Order dismissed his FCRA charges on account of administrative timeliness (based on a 4/26/19 administrative filing date).
36. Plaintiff has good reason to seek such relief.

V. Argument in Support of Clarification

37. Given Defendant’s penchant for deceit (§10 *supra*), Plaintiff expects the lingering ambiguity to lead to more of Defendant’s duplicity. Plus, clarification will impact a potential/reiterated appeal (please see Sartin v McNair, 756 F.3d 259 (4th Cir. 2014)).
38. Moreover, That Order’s unclarified status implies that the clear error is in effect. In other words, That Order is – conceivably – still treating April 26, 2019 as the [wrong] filing date of Plaintiff’s administrative complaint (§30-

35 *supra*). Yet – at the same time – ratification of a clear error could not conceivably have been That Order’s intent.

- a. Ratification of an erroneous date – importantly – which That Order never explicitly stated/recited (ie, That Order never mentioned April 26, 2019).

39. Thankfully, Rule 60(a) Fed. R. Civ. P. bestows this Court with the power to clarify its original intent (highlights added):

“In sum, then, Rule 60(a) allows a court to clarify a judgment in order to correct a “failure to memorialize part of its decision,” to reflect the “necessary implications” of the original order, to “ensure that the court’s purpose is fully implemented,” or to “permit enforcement.” We now hold that Rule 60(a) allows for clarification and explanation, consistent with the intent of the original judgment, even in the absence of ambiguity, if necessary for enforcement.”

– Garamendi v. Henin, 683 F.3d 1069 (9th Cir. 2012)

40. Here, in the instant case, clarification will:

- a. help **enforce discovery**;
 - by – for example – allowing parties to showcase the FCHR’s improprieties.
- b. help **streamline the proceedings**; and
 - by – for example – eliminating/**crystallizing a point-on-appeal**.

c. help **illuminate an avenue of factual findings for the jury.**

- by – for example – showcasing the state-sponsored discrimination that Defendant has enjoyed (at Plaintiff's expense).^{5/}

41. Moreover, clarification will only take this Court a few minutes to provide.

a. In other words, clarification will help ‘*secure a just, speedy, and inexpensive determination of this action*’ (Rule 1 Fed. R. Civ. P.)

So, Plaintiff sees no equitable reason to withhold it.

42. Historically (and lastly), this court-of-equity has previously found these points to be persuasive factors for rendering clarification:

“The Court is persuaded by these cases and will apply the standards used for Rule 60(a) to [movant]’s motion [for clarification]”

– Casequin v Cat 5, 2:18-cv-588 (USFLMD 10/12/21)

43. Here, Plaintiff merely asks this Court to be similarly persuaded (as it was in its Casequin decision – and many other decisions) *en route* to clarifying one important aspect of That Order.

CONFERRAL

On July 7, 2023, Plaintiff asked Defendant (via email) whether it opposed this motion. He also followed up to see if Defendant would stipulate to the underlying correction (ie, that *'April 10, 2019 marked the date in which Plaintiff filed his administrative charge'*). Unfortunately, though, Defendant failed to respond with a direct answer. So, Plaintiff followed up via phone (twice). Yet, Defendant did not answer either call; and Defendant has not replied since (Plaintiff will update this conferral note upon communication).

Nevertheless, in compliance with the requirements of Local Rule 3.01(g), Plaintiff believes the foregoing presents a compelling (ie, *streamline the proceeding*) and important (ie, *prevent/minimize manifest injustice*) reason for obtaining the requested relief.

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Honorable Court to state [explicitly] whether That Order's dismissal of Plaintiff's FCRA charges was on the basis of administrative timeliness.

Dated this 7th day of July 2023.

Respectfully submitted,
/s/ Elias Makere
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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 Century Schoolbook 13-point font (contents); thus complying with the font requirements of Local Rule 1.08.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July 2023, I electronically filed the foregoing with the Clerk of Courts by using its online filing page. A notice - via CM/ECF - will be sent to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} entered on-or-around June 21, 2023 {#96}.

^{2/} please see "*Plaintiff's Memorandum of Law Regarding Equitable Tolling on Plaintiff's Verified Complaint*" (3:21-cv-00242-MMH-JBT; ≈ 3/9/21) to see why the Title VII charges were delayed.

^{3/} please see 11th Circuit Court of Appeals, 22-13588 {#13-2} (12/14/22) (at page 2)

^{4/} a determination which the state agency mailed to the wrong person (not discovered by Plaintiff until 7 months later). A determination, pertinently, that was also null & void.

^{5/} as alleged in Plaintiff's operative complaint {#73}

"*Thereby buoyed by the beckoning crowd - and aided by the state - [Defendant] acted illegally.*"

lawlessness that included - but was not limited to:

"(a) removing Plaintiff's sex discrimination charge;

(b) mailing Plaintiff's determination letter to someone else; and

(c) inducing the EEOC to mail Plaintiff's Right-to-Sue letter to the wrong person"

- Complaint at ¶128 {#73}

Link to Underlying Complaint ([HTML](#), [PDF](#), [Video](#))

HTML	TextBookDiscrimination.com/Allstate/Complaint-Full.html
PDF	TextBookDiscrimination.com/Files/USFLMD/20000905 AAC 20211104 230439.pdf
Video	https://youtu.be/e3mgBPHesXg

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Files/USFLMD/20000905 GMOT 20230707 094924.pdf

TextBookDiscrimination.com/Guides/Motions/Clarification.html

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