
FCHR BRIBERY

{LAST UPDATE: 3/31/2021}
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FCHR BRIBERY

ITEM A ARTICLE I SECTION 21 FLORIDA CONSTITUTION

DATE: 11/5/1968

ARTICLE I SECTION 21 | ACCESS TO COURTS

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

FCHR BRIBERY

ITEM B \$760.06 FLORIDA STATUTE

DATE: 1/1/2020

§760.06 FS | POWERS OF THE COMMISSION

Within the limitations provided by law, the commission shall have the following powers:

- (1) To maintain offices in the State of Florida.
- (2) To meet and exercise its powers at any place within the state.
- (3) To promote the creation of, and to provide continuing technical assistance to, local commissions on human relations and to cooperate with individuals and state, local, and other agencies, both public and private, including agencies of the Federal Government and of other states.
- (4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities.
- (5) To receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992.
- (6) To issue subpoenas for, administer oaths or affirmations to and compel the attendance and testimony of witnesses or to issue subpoenas for and compel the production of books, papers, records, documents, and other evidence pertaining to any investigation or hearing convened pursuant to the powers of the commission. In conducting an investigation, the commission and its investigators shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The authority to issue subpoenas and administer oaths may be delegated by the commission, for investigations or hearings, to a commissioner or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission to give testimony and to produce evidence concerning the matter in question. Failure to obey the court's order may be punished by the court as contempt. If the court enters an order holding a person in contempt or compelling the person to comply with the commission's order or subpoena, the court shall order the person to pay the commission

reasonable expenses, including reasonable attorneys' fees, accrued by the commission in obtaining the order from the court.

(7) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.

(8) To furnish technical assistance requested by persons to facilitate progress in human relations.

(9) To make or arrange for studies appropriate to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and to make the results thereof available to the public.

(10) To become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect the Florida Civil Rights Act of 1992.

(11) To render, at least annually, a comprehensive written report to the Governor and the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of the Florida Civil Rights Act of 1992.

(12) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of the Florida Civil Rights Act of 1992 and govern the proceedings of the commission, in accordance with chapter 120.

(13) To receive complaints and coordinate all activities as required by the Whistle-blower's Act pursuant to ss. 112.3187-112.31895.

History.—s. 5, ch. 69-287; s. 3, ch. 72-48; s. 1, ch. 75-232; s. 5, ch. 77-341; s. 5, ch. 92-177; s. 4, ch. 92-282; s. 26, ch. 99-333.

Note.—Former ss. 13.251, 23.166.

FCHR BRIBERY

ITEM C CANON 5D - FLORIDA CODE OF JUDICIAL CONDUCT

DATE: 2/20/2003

CANON 5D | FINANCIAL ACTIVITIES

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the

administration of justice, including attending, without charge, a bar-related lunch, dinner, or social event; and if the value of attending an individual function or event exceeds \$100, the judge shall report it under Canon 6B(2);

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds \$100.00, the judge reports it in the same manner as the judge reports gifts under Canon 6B(2)

([Amended Jan. 10, 2002 (816 So. 2d 1084); Feb. 20, 2003 (840 So. 2d 1023); Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); May 22, 2008 (983 So. 2d 550); June 19, 2014 (141 So. 3d 1172); July 7, 2016, effective Oct. 1, 2016 (194 So. 3d 1015) ; May 18, 2017, effective Jan. 1, 2017 (218 So. 3d 432).])

Commentary

Canon 5D(1). When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Canon 2B; see also Canon 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see Commentary to Canon 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 5A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Canon 5B. regarding use of the phrase "subject to the requirements of this Code."

Canon 5D(2). This Canon provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

Canon 5D(3). Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Canon 5D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

Canon 5D(5). Canon 5D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Canon 5D(5)(a). Acceptance of an invitation to a law-related function is governed by Canon 5D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 5D(5)(h).

The attendance, without charge, of a bar-related lunch, dinner, or social event such as a reception or Law Day event does not have to be reported under Canon 6B(2), as long as the actual value of attending the individual function or event does not exceed \$100, despite the fact that the aggregate value of attending such functions or events given by the same bar association or other entity in the same calendar year exceeds \$100. This differs from Rule 3.15 of the American Bar Association Model Code of Judicial Conduct (2011), which requires the reporting of such attendance if the value of attending such functions or events alone or in the aggregate from the same source in the same calendar year exceeds a specified amount.

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Canons 5A(1) and 2B.

Canon 5D(5)(d). A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 5D(5)(e).

Canon 5D(5)(h). Canon 5D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

[Commentary amended Feb. 20, 2003 (840 So. 2d 1023); Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); May 22, 2008 (983 So. 2d 550); June 19, 2014 (141 So. 3d 1172); July 7, 2016, effective Oct. 1, 2016 (194 So. 3d 1015); May 18, 2017, effective Jan. 1, 2017 (218 So. 3d 432).]

FCHR BRIBERY

ITEM D PETITION FOR DECLARATORY STATEMENT BEFORE THE
 FCHR

DATE: 9/1/2020

**STATE OF FLORIDA
FLORIDA COMMISSION ON HUMAN RELATIONS**

ELIAS MAKERE, FSA, MAAA)
Petitioner,)
)
)
)
)
)
)

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR)**

Petitioner, ELIAS MAKERE FSA MAAA, on this 27th day of August 2020, respectfully petitions the Florida Commission on Human Relations (hereinafter "Agency") for a declaratory statement on the permissibility of bribes during the investigative phase of a case.

Key Points:

- A.) Question Is a respondent allowed to bribe the Agency?
- B.) Precedence Florida agencies have ruled on similar petitions

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Background: Petitioner's rights are protected by §760 Florida Statutes
Problem: §760.06(4) indicates that Petitioner's rights are for sale
Request: The Agency declares whether it accepts bribes

28-105.001 | Florida Administrative Code | Purpose and Use

"A petition for declaratory statement may be used to resolve questions or doubts as to how the [rules] apply to the petitioner's particular circumstances."

§120.565(2) | Florida Statutes (2018)

"The petition seeking 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"

Art. I. Sec. 21 Florida Constitution | Access to Courts


"The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay."

Precedence

- DH 17-1605-D5-MQA - Case Law (8/30/17)
The Department of Health entered a declaratory statement

PETITION

This Petitions is brought pursuant to §120.565 FS and 28-105 (FAC). The basics are as follows:

1	CAPTION	Petition for Declaratory Statement Before the FCHR
2	PETITIONER	Elias Makere, FSA, MAAA
	Address:	3709 San Pablo Rd. S. 701 Jacksonville, FL 32224
	Email:	justice.actuarial@gmail.com
	Phone:	904.294.0026
	Fax:	n/a
3	COUNSEL	n/a
4	LAW	§760.06(4)
	Relevant Excerpt (emphasis added):	<i>"Within the limitations provided by law, the commission shall have the following powers: (4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities."</i>
5	IMPACT	Course of Action in Florida (employment/etc.)
	Explanation:	See "Circumstances" (Page 4)
6	SIGNATURE	
		Elias Makere, Petitioner
7	DATE	8/27/2020

QUESTION PRESENTED

Petitioner asks the Agency, "Is a respondent allowed to bribe you during the investigative phase of a discrimination case?"

CIRCUMSTANCES

I. Facts

1. Petitioner is a Florida resident.
2. Petitioner is contemplating employment within the state.
3. Petitioner also frequents places of public accommodation in Florida.
4. Petitioner is an actuary; a distinction that uniquely qualifies him to develop insurance products. As such, he is planning an insurance policy that will protect him [and others] from the financial losses associated with discrimination.
5. Petitioner is concerned with (a) in-state entities' proclivity to discriminate against him; (b) the subsequent losses he would suffer; and (c) Florida's willingness/motivation to protect his civil rights.

II. Law

6. Chapter 760 of the Florida Statutes provides the legal authority for investigations into discrimination. §760.06 (FS) states the following (emphasis added):

"Powers of the Commission - Within the limitations provided by law, the commission shall have the following powers: ... (5) to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice..."

7. §760.06(4) continues to state that the Agency can accept gifts/bequests:

"... the [Agency] shall have the [powers to] accept gifts, bequests, grants, or other payments, public or private..."

8. According to Chapter 760, the FCHR has jurisdiction over this matter. Furthermore, it has authority to issue a Final Order pursuant to §120.565 (FS) and Rule 28-105 (FAC).

"... reasoning employed by the agency in support of a declaratory statement may be useful guidance to others who are likely to interact with the agency in similar circumstances." Chiles v. Dep't of State, Div. of Elections, 711 So. 2d 151, 154-55 (Fla. 1st DCA 1998)"

III. Application

9. The Agency has a ministerial duty to satisfy §760.06(5) with regards to Petitioner. And contingent upon the Agency's determination, Petitioner will have access to the court system.^{1/}

10. Pursuant to Art. I. Sec. 21 of the Florida Constitution, Petitioner's access to the courts cannot be fettered by bribery (emphasis added):

"The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay."

- Art. V Sec. 21 Florida Constitution

11. Petitioner relies on the Agency to protect his civil rights. However, as it stands, he has well-founded uncertainty as to the Agency's motivations. Notably, the controversy between Agency bribery and the constitution.

12. This scenario - where a civilian questions a statutory right - is precisely the scenario that the declaratory statement 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 v. Florida PSC, 164 So.3d 58 (Fla. 1st DCA 2015)

13. Moreover, Petitioner has demonstrated that he has standing for a declaratory statement. In Couch v State, 377 So. 2d 32 (Fla. 1st DCA 1979), the First District Court of Appeals established a two-part test for determining whether an administrative agency (ie, the FCHR) must provide a declaratory statement.

(i) Part One: a movant must show bona fide doubt/dispute

(ii) Part Two: the court must be incapable of resolving the dispute

14. Petitioner satisfied 'Part One' by contrasting the disputed statute with the Florida constitution (ie, §760.06(4) vs Art. I. Sec. 21). He also satisfied 'Part Two' by virtue of the Agency's sole jurisdiction over the statute in controversy (ie, §760.06(4)).

SUMMARY

Petitioner desires a determination of his rights, duties, and a declaration from the FCHR regarding the permissibility of bribes during investigations of discrimination complaints.

CONCLUSION

WHEREFORE, pursuant to §120.565 (FS) and Rule 28-105 (FAC), Petitioner respectfully requests a declaration on whether §760.06(4) (FS) allows a respondent to bribe the Agency with gifts/bequests/etc during investigations of discrimination complaints.

Dated this 27th day of August 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

CERTIFICATE OF COMPLIANCE

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August 2020, I electronically filed the foregoing with the people on the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} either via §760.11(4)(a) FS, §760.35 (FS), or §120.68 (FS).

SERVICE LIST

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FCHR BRIBERY

ITEM E FINAL ORDER DENYING PETITION FOR DECLARATORY
STATEMENT

DATE: 3/31/2021

ORDER NO.: 21-029

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

IN RE:

SEPTEMBER 1, 2020 PETITION FOR
DECLARATORY STATEMENT

ELIAS MAKERE,

FCHR Order No. 21-029

Petitioner

FINAL ORDER DENYING PETITION FOR DECLARATORY STATEMENT

Preliminary Matters

On September 1, 2020, Elias Makere, Petitioner, 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 46, Number 175, September 8, 2020. The Commission has not received a petition to intervene in this action from any other person.

The Commission undertook action to resolve the Petition for Declaratory Statement at a duly noticed public hearing on March 31, 2021. Petitioner seeks, "a declaratory statement on the permissibility of bribes during the investigative phase of a case." The petition poses the following question to the Commission: "Is a respondent allowed to bribe you during the investigative phase of a discrimination case?" Petitioner cites to section 760.06(4), Florida Statutes (2020). Section 760.06(4), Florida Statutes (2020) states, in pertinent part, "Within the limitations provided by law, the commission shall have the following powers . . . [t]o accept gifts, bequests, grants, or other payments, public or private, to help finance its activities."

"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).

Comments

The Commission received two comments from Petitioner. The first comment, citing to two sources, states two separate definitions for the term "bribe" and concludes by requesting the Commission to apply the "textbook definitions of 'bribe/bribery'" in responding to the petition for declaratory statement. The second comment from Petitioner essentially states that Petitioner is not requesting the Commission to interpret the Florida Constitution.

Conclusions of Law

The Florida Administrative Procedure Act states, "[a]ny 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 (2020). It also states, "[t]he 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 (2020). 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.

The Administrative Procedure Act broadens public access to agency activities. Fla. Home Builders Assoc. v. Dept. of Labor & Employment Sec., 412 So. 2d 351, 352 (Fla. 1982). However, Petitioner must allege facts showing that there is a bona fide, actual, present and practical need for a declaration. See Okaloosa Island Leaseholders Association v. Okaloosa Island Authority, 308 So. 2d 120 (Fla. 1st Dist. 1975). Given the fact that the words "[w]ithin the limitations provided by law [emphasis added]" plainly appear within 760.06(4), Florida Statute, there is no doubt to resolve, and there is no controversy to address with regard to whether respondents are permitted to bribe the Commission. In short, there is no demonstrated need for a declaration.

Denial of Petition

The Petition for Declaratory Statement is DENIED, because Petitioner does not meet the requirement of alleging facts that show a bona fide, actual, present and practical need for a declaration. Section 760.06(4), Florida Statute, (2020) does not indicate more than one interpretation of the provision in question. Accordingly, the Petition for Declaratory Statement 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 31 day of March, 2021

for the FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Mario Garza, Panel Chairperson;
Commissioner Libby Farmer; and
Commissioner Larry Hart

Filed this 31 day of March, 2021 in Tallahassee, Florida.

Tammy Barton

Clerk

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

Copies furnished to:

Elias Makere
3709 San Pablo Rd. S #701
Jacksonville, Florida 32224

John Scotese, Legal Advisor for Commission Panel

I HEREBY CERTIFY that copy of the foregoing has been mailed.
to the above listed addresses this 31 day of March, 2021

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

APPENDIX

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