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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEBORAH C. WOODS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-1763  
 )  
 AMERICAN RED CROSS BLOOD )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings held a formal hearing in this cause before Administrative Law Judge Don W. Davis in Tallahassee, Florida, and Daytona Beach, Florida, by video technology on July 25, 2001. The following appearances were entered.

APPEARANCES

For Petitioner: David Glasser, Esquire  
Glasser and Handel  
150 South Palmetto Avenue  
Suite 100, Box N  
Daytona Beach, Florida 32114

For Respondent: Douglas P. Kreuzkamp, Esquire  
American Red Cross Blood Services  
King & Spalding  
191 Peachtree Street  
Atlanta, Georgia 30303-1763

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner's allegation of subjection to an unlawful employment practice is barred by Section 760.11(1), Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Complaint against Respondent with the Florida Commission on Human Relations on July 10, 2000, alleging race, age, and disability discrimination.

On March 12, 2001, the Florida Commission on Human Relations issued its determination of a lack of jurisdiction to consider Petitioner's Complaint in the face of the statutory deadline set forth in Section 760.11(1), Florida Statutes, which gives the aggrieved employee only 365 days within which to seek redress.

On April 16, 2001, Petitioner filed a Petition for Relief with the Florida Commission on Human Relations. The case was forwarded to the Division of Administrative Hearings for formal proceedings on May 4, 2001.

During the hearing, Petitioner presented the testimony of one witness and eight exhibits. Respondent presented no testimony or exhibits. The Transcript of the proceeding was filed on August 22, 2001.

The parties requested and were granted leave to file proposed recommended orders more than 10 days from conclusion of the final hearing. Both Petitioner and Respondent filed

Proposed Recommended Orders which have been reviewed and considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner was previously employed by Respondent until her termination on November 15, 1996. Petitioner discussed the firing with her attorney in January of 1997. Petitioner was apprised by the attorney that she could file a complaint with the Florida Commission on Human Relations (FCHR) or the Equal Employment Opportunity Commission (EEOC).

2. Prior to August of 1997, Petitioner's attorney informed her that he had filed a Charge of Discrimination on behalf of Petitioner with the EEOC. Petitioner was led to understand that an investigator for EEOC would contact her. Petitioner was never contacted by the EEOC.

3. On April 14, 2000, Petitioner received a notice from her attorney that apprised Petitioner that the attorney had been suspended from the practice of law by the Supreme Court for a period of 10 days. Later in either May or June, Petitioner read a newspaper article that recounted the suspension of Petitioner's attorney from the practice of law.

4. Petitioner then determined to consult her present counsel in this matter, David Glasser, Esquire, to handle the charge she believed had been filed with the EEOC.

5. Petitioner learned through Glasser that her previous counsel had not filed a complaint or charge with the EEOC. On July 10, 2000, Petitioner filed her Charge of Discrimination with the FCHR.

6. Petitioner has neither filed a complaint with the Florida Bar Association or filed a legal malpractice suit against her previous counsel.

#### CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 120.57(1), Florida Statutes, and Chapter 760, Florida Statutes.

8. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992," provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

9. The adverse effectuation of an employee's compensation, conditions, and privileges of employment on the basis of race or sex is an unlawful employment practice.

10. Section 760.11(1), Florida Statutes, requires that any person aggrieved by an adverse effectuation of employee rights file a complaint with the FCHR within 365 days of the alleged violation. Notably, Section 760.11(1) is a statute of limitations. See Greene v. Seminole Electric Coop., Inc., 701

So. 2d 646, 648 (Fla. 5th DCA 1997). Petitioner's employment was terminated on November 15, 1996. Petitioner's claim was filed on July 10, 2000, or approximately 968 days too late to vest the FCHR with jurisdiction of the matter.

11. Petitioner requests the tolling of the statute of limitation based on her former attorney's neglect. The Florida Legislature has enumerated the limited exceptions that permit such tolling in Section 95.051(2), Florida Statutes. These exceptions include: (a) a person's absence from the state; (b) a person's use of a false name to avoid service of process; (c) a person's concealment in a state to avoid service of process; (d) a court's adjudication that a person is incapacitated; (e) voluntary payments by a father in a paternity action; (f) the payment of an obligation on a written instrument; and (g) the pendency of a related arbitral proceeding. None of the exceptions includes attorney neglect.

12. Petitioner has requested the "equitably" tolling of the FCHR statute of limitations. According to the Florida Supreme Court, "[t]he doctrine of equitable tolling was developed to permit under certain circumstances the filing of a lawsuit that otherwise would be barred by a limitations period." Machules v. Dept of Administration, 523 So. 2d 1132, 1133 (Fla. 1988). The Court has stated that equitable tolling is appropriate where a party has: (1) been misled or lulled into

inaction; (2) has in some extraordinary way been prevented from asserting his rights; or (3) has timely asserted his rights mistakenly in the wrong forum. See Id. at 1134. Additionally, a party requesting equitable tolling must prove that he or she acted "with a reasonably prudent regard for his [or her] rights." Id.

13. Petitioner, as the party seeking application of the doctrine, has the burden of proving that equitable tolling is appropriate. See Carter v. West Publishing Company, 225 F.3d 1258, 1265 (11th Cir. 2000). Petitioner has failed to meet the burden by providing such proof.

14. Finally, Petitioner can pursue recourse against her previous attorney for failing to timely file her Charge of Discrimination by filing a complaint with the Florida Bar or by pursuing a civil tort action against him. Petitioner has failed to do either.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That a Final Order be entered dismissing the Petition for Relief.

DONE AND ENTERED this 17th day of September, 2001, in  
Tallahassee, Leon County, Florida.

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DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of September, 2001.

COPIES FURNISHED:

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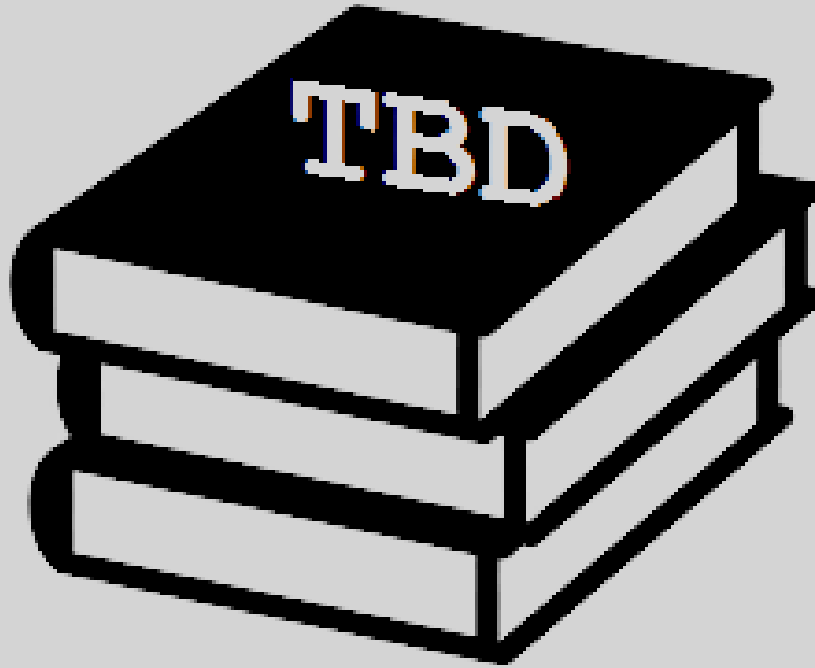
NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.

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